

5-23-2012

# Morris v. Hap Taylor & Sons, Inc. Agency's Record v. 1 Dckt. 39747

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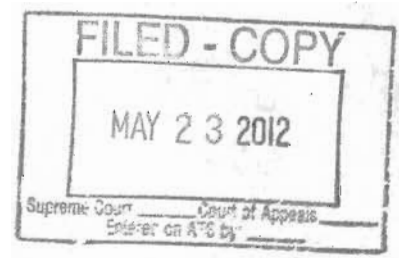
**BEFORE THE SUPREME COURT OF THE STATE OF IDAHO**

BENJAMIN MORRIS,  
  
Claimant/Appellant,  
  
v.  
  
HAP TAYLOR & SONS, INC.,  
  
Employer,  
  
and  
  
LIBERTY INSURANCE CORP.,  
  
Surety,  
  
Defendants/Respondents.

**LAW CLERK**

**SUPREME COURT NO. 39747-2012**

**AGENCY RECORD  
VOLUME 1**



**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

Attorney for Appellant:	Starr Kelso P.O. Box 1312 Coeur D'Alene, ID 83816
Attorney for Respondents:	Kent W. Day P.O. Box 6358 Boise, ID 83707-6358

**AGENCY RECORD – VOLUME 1  
(S.C. # 39747-2012 RE: BENJAMIN MORRIS)**

**39747**

**COPY**

**BEFORE THE SUPREME COURT OF THE STATE OF IDAHO**

BENJAMIN MORRIS,

Claimant/Appellant,

v.

HAP TAYLOR & SONS, INC.,

Employer,

and

LIBERTY INSURANCE CORP.,

Surety,

Defendants/Respondents.

**SUPREME COURT NO. 39747-2012**

**AGENCY RECORD  
VOLUME 1**

---

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

Attorney for Appellant:

Starr Kelso  
P.O. Box 1312  
Coeur D'Alene, ID 83816

Attorney for Respondents:

Kent W. Day  
P.O. Box 6358  
Boise, ID 83707-6358

**AGENCY RECORD – VOLUME 1  
(S.C. # 39747-2012 RE: BENJAMIN MORRIS)**

**COPY**

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**LIST OF EXHIBITS**

**REPORTER'S TRANSCRIPT: NO HEARING WAS HELD.**

**CLAIMANT'S EXHIBITS: None.**

**DEFENDANTS' EXHIBITS: None.**

**ADDITIONAL DOCUMENTS: None.**



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ORIGINAL

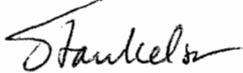
Attorney for Claimant Morris

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BENJAMIN MORRIS,	:	
Claimant,	:	
	:	I.C. NO.: 2006-525142
vs.	:	
	:	NOTICE OF APPEARANCE
HAP TAYLOR & SONS, INC.	:	
Employer,	:	
and	:	
LIBERTY INSURANCE CORP.,	:	
Surety,	:	
<u>Defendants.</u>	:	

COMES NOW the Claimant by and through his attorney, Starr Kelso, and does hereby serve Notice that Starr Kelso, Attorney at Law, represents the Claimant in this matter and that any correspondence or pleadings of any nature or kind are to be sent to him.

DATED this 8<sup>th</sup> day of July, 2011.



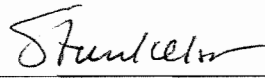
Starr Kelso, Attorney for Claimant Morris

CERTIFICATE OF SERVICE: I certify that a copy was mailed on the 8<sup>th</sup>  
day of July, 2011 to:

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ORIGINAL

Attorney for Claimant Morris

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BENJAMIN MORRIS,	:	I.C. NO. 2006-525142
Claimant,	:	
vs.	:	MOTION TO REVIEW LUMP SUM
	:	SETTLEMENT AGREEMENT TO
HAP TAYLOR & SONS, INC.	:	CORRECT A MANIFEST INJUSTICE
Employer,	:	PURSUANT TO I.C. § 72-719, OR IN
and	:	THE ALTERNATIVE TO FIND
	:	AGREEMENT AMBIGUOUS AND
	:	ORDER PAYMENT OF TTDS AND
	:	MEDICAL CARE, AND FOR A
LIBERTY INSURANCE CORP.,	:	REVIEW OF THE ATTORNEY FEES
	:	PAID BY CLAIMANT AND RETURN
Surety,	:	AS DEEMED EQUITABLE
<u>Defendants.</u>	:	

COMES NOW the Claimant by and through his attorney, Starr Kelso, and does hereby move the Industrial Commission, pursuant to I.C. §72-719, for an Order requiring the Lump Sum Settlement Agreement in this matter reviewed to address a perceived manifest injustice.

It is moved that the Industrial Commission schedule a hearing, upon proper notice, to investigate and determine whether a manifest injustice occurred in this

matter by the approval of the Lump Sum Settlement Agreement on January 10, 2010.

It is further moved that the Industrial Commission, should it determine that the Lump Sum Settlement Agreement represents a manifest injustice, Order that the Lump Sum Settlement Agreement be set aside, vacated, and declared null and void upon terms that the Industrial Commission deems equitable under the circumstances.

Should the Industrial Commission determine that a manifest injustice did not occur in this matter, by the Lump Sum Settlement Agreement, it is moved that it find the Lump Sum Settlement Agreement ambiguous in that it states at page 7 thereof that it does discharge the claim “except for reasonable and necessary medical benefits causally related to the October 18, 2006 injury and time loss benefits associated therewith”. Should the Industrial Commission find the above quoted language, or other terms of the Lump Sum Settlement Agreement, to be ambiguous that it Order that the Lump Sum Settlement Agreement be set aside or, in the alternative, order that the Claimant receive Temporary Total Disability benefits from the date of their termination, December 1, 2008, through the conclusion of Claimant’s receipt of reasonable and necessary medical benefits which are, at this time, still ongoing.

It is further moved that the Industrial Commission review the attorney fees and costs paid by Claimant and, if they are found to be improper, that it Order the fees and costs repaid to Claimant to the extent the Commission deems equitable.

Claimant further seeks an award of attorney fees and costs incurred in pursuing this matter.

This motion is based upon, and supported by, the Memorandum of Law and the affidavit of Starr Kelso filed herewith. These matters will be further elaborated upon after appropriate discovery at hearing.

DATED this 8<sup>th</sup> day of July, 2011.

Starr Kelso  
Starr Kelso, Attorney for Claimant Morris

CERTIFICATE OF SERVICE: I certify that a copy was mailed on the 8<sup>th</sup> day of July, 2011 to:

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ORIGINAL

Attorney for Claimant Morris

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BENJAMIN MORRIS,	:	
Claimant,	:	
	:	I.C. NO.: 2006-525142
vs.	:	
	:	MEMORANDUM OF LAW
HAP TAYLOR & SONS, INC.	:	IN SUPPORT OF CLAIMANT'S
Employer,	:	MOTION TO REVIEW LSSA
and	:	
	:	
LIBERTY INSURANCE CORP.,	:	
Surety,	:	
<u>Defendants.</u>	:	

COMES NOW the Claimant by and through his attorney, Starr Kelso, and files this Memorandum of Law in support of his Motion for Review of the lump sum settlement agreement on the ground of manifest injustice pursuant to Idaho Code § 72-719 (3).

FACTS

1. On October 18, 2006 the Claimant suffered a severe closed head injury when he was struck in the head by an extremely large boulder travelling

at a very high rate of speed.<sup>1</sup> He suffered cervical strain, chronic neck pain, anxiety, PTSD, depression, headaches, photophobia, vertigo, dizziness, chronic jaw pain, and TMJ as a result of an industrial accident and injury while working for Employer.

2. At the time of the industrial accident and injury the Claimant was 30 years old and the father of two dependent minor children.
3. On July 17, 2007, Dr. Daniel S. Hayes, Ph.D. examined the Claimant and subsequently issued his report that, in part, opined that Claimant “is cognitively impaired from a traumatic brain injury and is unable to function independently.”<sup>2</sup> (emphasis added)
4. After his evaluations of Claimant on April 27, 2007, June 18, 2007, and July 30, 2007, Dr. Daniel S. Hayes, Ph.D. issued his report<sup>3</sup> that, in part, opined that Claimant’s condition was “impacting his functional abilities.” (emphasis added)
5. As of October 29, 2009, Dr. Stanek the Claimant’s treating physician, stated that he continued to suffer from residual post concussion

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<sup>1</sup> See attached photos of boulder, Exhibit 1.

<sup>2</sup> See the attached report of Dr. Hayes, Exhibit 2.

<sup>3</sup> See the attached report of Dr. Hayes, Exhibit 3.

syndrome, TMJ, neck pain, frequent headaches, cognitive deficits, anxiety, agitation, hyposomnia, and depression.<sup>4</sup>

6. On April 22, 2008 Dr. Gerald Gardner, Ph.D. examined the Claimant and subsequently issued his report<sup>5</sup> that, in part, states:

- a. “He would appear to have some impairment of memory for instructions and procedures.”
- b. “He has significant anxiety symptoms and social avoidance. I doubt that he would be able to sustain a full work schedule under ordinary stressors or with ordinary contacts with others.”
- c. “He appears unable to manage funds reliably.” (emphasis added)

7. On July 6, 2008 Claimant’s treating physician, Dr. Karen A. Stanek, wrote to Liberty’s claim manager Julie Osler and advised her that Claimant’s deficits include hyposomnia, which impacts all aspects of his life including his health, memory impairment and headaches/neck pain, all which have inhibited his return to work. She also advised the claims manager that the Claimant continues to be plagued with poor memory, which would inhibit his success in sustaining viable employment. She also recommended treatment at a memory clinic in Coeur d’Alene,

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<sup>4</sup> See attached report of Dr. Stanek, Exhibit 4.

<sup>5</sup> See the attached report of Dr. Gardner, Exhibit 5.



injections, physical therapy, and vocational rehabilitation once physical therapy is completed. Dr. Stanek stated that if “if suitable employment is not determined, recommend for pension and closure of his claim.”<sup>6</sup>

8. On July 31, 2009 Claimant’s then attorney (Walker) wrote to Claimant advising him how much attorney fee, and how, Walker was taking, and going to take, from Claimant’s impairment rating payments.<sup>7</sup>
9. Claimant received Social Security Disability benefits. In November 2009 the amount was \$803.40 less \$370.50 for child support or a net amount of \$418.50. In March 2010, after deduction for child support, he received \$511.00.<sup>8</sup>
10. As a result of the report of Dr. Gardner the Social Security Administration appointed a representative payee to receive his Social Security Disability benefit payments for disbursement to him. At all times relevant hereto the representative payee is Claimant’s father, Harold Dean Morris. The representative payee Claimant’s father has the responsibility for releasing the Social Security monetary benefits to Claimant, recording payments, and reporting how the Social Security

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<sup>6</sup> See the attached report, Exhibit 6. “Pension as used in the report most likely is a reference to what total permanent disability is apparently referred to in the State of Washington under it’s workers’ compensation system.

<sup>7</sup> See the attached Exhibit 7.

<sup>8</sup> See the attached decision, Exhibit 8.

benefits were paid and what the payments were for,<sup>9</sup> in order to ensure the Claimant utilizes the money in an appropriate manner.

11. Claimant's Temporary Total Disability Benefits were terminated on December 1, 2008. (see LSSA, exhibit 12, page 6)

12. Claimant was originally represented in this claim by attorney James Hannon. Subsequently he was represented by attorney Michael J. Walker. Mr. Walker's attorney fee agreement,<sup>10</sup> as written, appears based upon, and consistent with, the Industrial Commission's administrative rules under IDAPA regarding attorney fees. Mr. Walker had the Claimant sign a Disclosure Statement<sup>11</sup> providing that prior to a hearing attorney fees of 25% would be taken from "benefits your attorney obtains for you." (emphasis added)

13. It was over one year before the Lump Sum Settlement Agreement<sup>12</sup> was signed that Claimant's temporary total disability benefits were terminated.

14. Prior to Claimant's signing the Lump Sum Settlement Agreement the Claimant's Social Security Disability representative payee, Harold Dean Morris his father, requested to meet with Claimant's then attorney

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<sup>9</sup> See the attached Exhibit 9.

<sup>10</sup> See the attached Exhibit 10.

<sup>11</sup> See the attached Exhibit 11.

<sup>12</sup> See the attached Exhibit 12.

(Walker) to discuss the offer and the proposed settlement. He had met with, and spoken with, Claimant's then attorney (Walker) on previous occasions regularly prior to the final offer being made in this matter.

When settlement discussions were ongoing Claimant's then attorney (Walker) refused to meet with him regarding the proposed settlement and its ramifications to Claimant.<sup>13</sup> Claimant's father, as representative payee, had legitimate reasons to be concerned:

- a. On March 12, 2009 Claimant's treating physician, Dr. Stanek, sent a letter<sup>14</sup> to Claimant's then attorney (Walker) that Claimant had not reached maximum medical improvement. She stated Claimant needed treatment for headache pain and treatment for his TMJ condition. She stated, if Claimant were to be rated that his impairment rating would be 18% whole person, and not the 10% assigned by Defendants' raters.
- b. On August 2, 2009 Claimant's treating physician, Dr. Stanek, wrote the Liberty Northwest claims adjuster noting her disappointment with the St. Alphonsus Work STAR program, wanting Claimant to be involved in a "multidisciplinary program to address his

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<sup>13</sup> See the attached affidavit of Claimant's father, Exhibit 13.

<sup>14</sup> See the attached Exhibit 14.

headaches, neck pain, TMJ, deconditioning, assistance with diabetes management, psychological issues including the anger he is experiencing, and nutrition/weight loss.”<sup>15</sup> Dr. Stanek also requested medication to reduce Claimant’s neck and shoulder spasms, to address his complaint of vision changes, and photophobia, psychological counseling to address his chronic pain issues, depression, anxiety, and anger. She also requested that Claimant continue with vocational rehabilitation.

- c. On September 14, 2009 Claimant’s treating physician wrote Claimant’s then attorney (Walker) and advised him of the treatment that she had requested from Liberty Northwest.<sup>16</sup> She also stated that “Ben should work closely with a vocational rehabilitation counselor to determine suitable work situations.” This correspondence was sent to the Claimant on September 23, 2009.<sup>17</sup>
- d. On September 23, 2009 Claimant’s then attorney (Walker) wrote to the attorney for Libery Northwest and asked whether Liberty Northwest would proceed with the treatment recommendations of

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<sup>15</sup> See attached letter, Exhibit 15. Mr. Walker advised Dr. Stanek of his concern about the STAR program.

<sup>16</sup> See attached letter, Exhibit 16.

<sup>17</sup> See attached letter, Exhibit 17.

Dr. Stanek.<sup>18</sup> Undersigned counsel has not seen a written response, if any, to this request.

- e. On October 14, 2009 Liberty Northwest's in-house law office paralegal approved three of the four prescribed medications.<sup>19</sup> It is unknown to the undersigned what medical professional, if any, determined what prescriptions would be authorized.
- f. On December 15, 2009 Dan W. Brownell, Vocational Consultant, prepared his vocational report<sup>20</sup>. The Claimant did not see this report. It states that "This is an ongoing TBI with no resolve to the claimant's need for psychological and vocational assistance. The claimant has been made eligible for SSDI benefits under the disability guidelines...I highly recommend, as has his attending physician, that the claimant be involved in a sheltered employment placement with a job coach assigned; along with a work hardening program in order for this case to resolve successfully." (emphasis added)

15. On December 17, 2010 Claimant's then attorney (Walker) advised the Defendants' attorney that "Based upon the vocational report of Dan

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<sup>18</sup> See attached letter, Exhibit 18.

<sup>19</sup> See attached letter, Exhibit 19.

<sup>20</sup> See attached Exhibit 20.

Brownell, my client is willing to settle the indemnity side of this case for \$68,000 in new money.<sup>21</sup> Walker also advised Defendants' attorney that child support would have to be paid out of the settlement and that an attorney, Mr. Hannon had a "lien" that will need to be satisfied from the settlement.<sup>22</sup>

16. On December 18, 2009, with a hearing scheduled, apparently for sometime in January 2010, the Claimant had been without temporary total disability benefits since December 1, 2008. He was not working, he was only receiving minimal Social Security Disability benefits, his permanent partial impairment rating payments were finished, and he was in severe financial straits and under significant stress. As is well documented in the medical records, stress has an extremely adverse affect on Claimant's ability to think clearly because of his brain injury.

17. The stress and its effect on Claimant's already non-existent ability to manage his money on his own had to have been well known to his then attorney (Walker).

a. On December 18, 2009 after Claimant authorized his then attorney (Walker) to accept the settlement offer, the attorney wrote Liberty:

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<sup>21</sup> See attached letter, Exhibit 21.

<sup>22</sup> Whether the satisfaction of the "lien" of attorney Hannon was appropriate is addressed in detail below.

“My client is in need of these settlement funds as soon as possible. Please expedite preparation of the partial LSS documentation.”<sup>23</sup> (emphasis added)

- b. On December 21, 2009 Claimant’s then attorney (Walker) wrote Claimant to advise him that he “will push Liberty to expedite the Lump Sum Settlement paperwork.”<sup>24</sup> (emphasis added)
- c. On December 21, 2009 Claimant’s then attorney (Walker) advanced Claimant \$1,000.00 toward the pending settlement to tide him over.<sup>25</sup>
- d. On January 14, 2010, after the Claimant had signed the LSSA his then attorney advanced him \$2,000.00 “to tide you over until the settlement proceeds arrive.”<sup>26</sup> (emphasis added)

18. The Lump Sum Settlement Agreement was approved by the Industrial Commission on January 19, 2010. The proceeds of the Lump Sum Settlement Agreement, representing consideration of lump sum settlement, disputed PPI/PPD/PTD (PPI of 10% whole person--\$15,537.50), waiver of right to reconsideration and to appeal, totaled

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<sup>23</sup> See attached correspondence, Exhibit 22.

<sup>24</sup> See attached correspondence, Exhibit 23 .

<sup>25</sup> See attached correspondence, Exhibit 24.

<sup>26</sup> See attached correspondence, Exhibit 25.

\$54,381.00. This sum, according to the LSSA was to be disbursed as follows:

- a. Child Support--\$7,734.97
- b. Attorney fees --\$15,275.00 (pre-LSSA and from LSSA)
- c. Costs--\$1,428.00
- d. Total to Claimant from LSSA--\$31,623.00

19. However, as reflected by the January 27, 2010 correspondence from Claimant's then attorney (Walker) the Claimant actually received \$27,453.53.<sup>27</sup> The actual breakdown of deductions from the LSSA amount due to Claimant (\$54,381.00) raises some questions.

- a. Attorney fees in the sum equal to 25% of the \$54,381.00 "available funds" equals a total fee amount of \$13,595.25. This is the attorney fee identified at paragraph 4 (c) at page 6 of the LSSA.
- b. Claimant's then attorney (Walker) also deducted \$1,428.00 as "Additional costs to be taken from LSS."
- c. Claimant's then attorney's (Walker) letter of July 31, 2009<sup>28</sup> reflects that Walker charged Claimant a 25% attorney fee on the

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<sup>27</sup> See attached letter, Exhibit 26.

<sup>28</sup> See attached letter, Exhibit 7.



impairment rating that Claimant received from Defendants' evaluating doctors.

- d. Also Claimant's then attorney's (Walker) letter of July 31, 2009, reflects that during the period of 12-12-08 through 7-21-09 he "deducted" \$600.00 from Claimant's payment on the impairment rating received from Defendants' evaluating doctors.
- e. Also Claimant's then attorney's (Walker) letter of July 31, 2009 reflects that during the period from 12-12-09 through 7-21-09 he "deferred" \$2,190 and did not "deduct" it from payments to Claimant on the impairment rating.
- f. From Claimant's then attorney's (Walker) letter of October 7, 2009<sup>29</sup> it appears that he "deducted" at least an additional sum \$620.00 from payments to Claimant on the impairment rating for the months of September and October 2009, but it is unclear from the documents available to the undersigned counsel.
- g. It appears from the various documents that the total of attorney fees that Claimant's then attorney (Walker) deducted from Claimant's impairment rating payments equals the sum of \$2,810.00.

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<sup>29</sup> See attached letter, Exhibit 33.

- h. The attorney fees, listed in the LSSA at page 6 paragraph 4 (a), taken prior to LSS of \$1,680.00 does not equal the sum represented as being taken in Walker's July 31, 2009 and October 7, 2009 letters, \$2,810.00, from the Claimant's impairment rating payments.
- i. The listed attorney fees taken prior to the LSS (\$1,680.00) plus the additional costs to be taken from LSS (\$1,428.00) equals \$3,108.00 which sum does not equal the fees Claimant's then attorney's (Walker) correspondence states that he retained (\$2,810.00).
- j. The Claimant's then attorney (Walker) did advance a total of \$3,000.00, in anticipation of the LSSA being approved, to Claimant. On December 21, 2009<sup>30</sup>, before the LSSA was signed by Claimant, he received \$1000.00. On January 14, 2010<sup>31</sup> after Claimant signed the LSSA, but before it was approved, he received \$2,000.00.
- k. The LSSA provides, at page 6, that the TOTAL TO CLAIMANT is the sum of \$31,623.03. The Claimant's then attorney's (Walker)

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<sup>30</sup> See attached letter, Exhibit 24.

<sup>31</sup> See attached letter, Exhibit 25.

letter of January 27, 2010<sup>32</sup> states that Claimant is receiving \$27,453.53 from the LSSA, after deducting the \$3,000.00 advance, the \$7,734.97 child support payment, and \$1,169.50 paid to Claimant's first attorney (Hannon), from the LSSA amount of \$31,623.03.

20. In total, it appears, that Claimant was charged at least \$16,444.50 in attorneys' fees. (4(a) \$1,680 + 4 (c) \$13,595 + \$1,169.50 first attorney, Hannon, fees) A 25% attorney fee based upon the "available funds" for "Consideration of lump sum settlement; disputed PPI/PPD/PTD benefits of any kind, accrued and future; waiver of right to reconsideration and to appeal" was \$13,595.25.

21. In total a 25% attorney's fee on the "available funds", plus a 25% attorney fee on the \$15,537.50 permanent partial impairment benefits, equals \$17,479.62. This sum does not equal the attorney fee that the LSSA reflects was charged Claimant, \$15,272.00.

22. Dr. Stanek, while recommending further treatment, in response to the Defendants' rater's rating of 10% opined that Claimant had sustained an 18 percent whole person impairment<sup>33</sup>. Apparently no effort was taken

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<sup>32</sup> See attached letter, Exhibit 26.

<sup>33</sup> See attached letter, Exhibit 14.

to average the two ratings or to establish that the higher of the two ratings was the appropriate one. Nothing in this regard appears in the documents available to undersigned counsel at this time.

23. The Claimant's "reasonable and necessary medical benefits causally related to the October 18, 2006 injury and time loss benefits associated therewith" were not discharged by the Lump Sum Settlement Agreement. The language "time loss benefits associated therewith" (with reasonable and necessary medical benefits) is ambiguous to the undersigned counsel in view of the fact that Claimant received medical care after the temporary total disability benefits were terminated on December 1, 2008 and after the settlement was approved.
24. The language of the LSSA, at page 7, provides that "The lump sum is compensation for permanent impairment and permanent life time disability ...prorated over the lifetime of the claimant." Does this mean that the "lump sum payment" is for permanent impairment over and above the 10% previously paid? Even if it was meant to be only for disability (in excess of impairment) the settlement amount only provides for monthly benefits (based upon a four week month) in the total sum of \$62.92 per month. It is totally unclear how this miniscule sum of money

would be of any practical long term benefit to Claimant with the injuries, and consequences thereof, that he suffers as a result of his injuries.

25. As reflected by the May 26, 2010 Dirne Clinic Center office visit chart note the Claimant tried to return to work in landscaping but was not able to do so because of worsened headaches.<sup>34</sup>

26. On June 16, 2010 Claimant was admitted to the Kootenai Medical Center's Behavioral Health facility on a Kootenai County Police Hold because of suicidal statements made to his sister.<sup>35</sup>

27. On June 24, 2010 Claimant was referred to North Idaho Pain Management for trigger point injections.<sup>36</sup>

28. On August 17, 2010 Defendants' counsel contacted Claimant's then attorney (Walker) with a proposal to settle the "medical claim" of Claimant.<sup>37</sup> This proposal attached a "Medicare Allocation Report" prepared by Crowe Paradis on behalf of Defendants. This report reflects ongoing medical care even after Claimant signed the LSSA. The note for 1/15/10, page 7, reflects that Dr. Stanek referred Claimant for "SLRI Pain Clinic for comprehensive program to facilitate return to work" in addition to medication. The notes available, after the LSSA was

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<sup>34</sup> See attached chart note, Exhibit 27.

<sup>35</sup> See attached record, Exhibit 28.

<sup>36</sup> See attached record, Exhibit 29.

<sup>37</sup> See attached correspondence, Exhibit 31.

approved, for 2/26/10 and 3/12/10, refer Claimant for epidural steroid injections in his neck.

29. The Crowe Pardis analysis of future medical care, for Social Security set-aside purposes, recommended that a total of \$96,006.57 be set aside for medical treatment and prescription drug costs for Claimant.

30. On October 4, 2010 Claimant was examined by Gayle Smith, D.O. and she notes in her assessment that "Due to his impaired memory, [lack] of ability to carry out complicated instructions, and dizziness, I would [not] anticipate Ben returning to the work force anytime in the next 12 months, and likely will not be able to work at any time in the future."<sup>38</sup>

31. On January 4, 2011 the Claimant was examined again by Dr. Gayle Smith at the Dirne Center. The doctor's chart note<sup>39</sup> reports that he (Claimant) needs to work with a "PSR" assistant to help him remember to keep his medical appointments. She also reports increased irritability, anxiety, and increased tangential thoughts and speech. The doctor further notes that Claimant's "conversation is more unfocused, jumping to different ideas without appropriate links." The doctor reaffirms her recommendation for a neuropsychiatric evaluation and she states:

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<sup>38</sup> See attached report, Exhibit 31.

<sup>39</sup> See attached report, Exhibit 32.

“My concern is that Benjamin is not able to work independently, and I am uncertain that he will be able to return to work independently, however he may be able to participate in employment through some type of assisted service, such as TESH.”

32. On June 23, 2011, after receiving verification that Dr. Gardner’s opinion, Exhibit 5, meant that Claimant was not able to manage his own financial affairs or make decisions on his own regarding the same on his own, the undersigned counsel agreed to represent Claimant to seek to have the LSSA declared a manifest injustice and to pursue other related issues.

## LEGAL ARGUMENT

### MANIFEST INJUSTICE

Idaho Code § 72-719 (3) states:

(3) The commission, on its own at any time within five (5) years of the date of the accident causing the injury or date of first manifestation of an occupational disease, may review a case in order to correct a manifest injustice.

The Commission has the authority in the exercise of its powers under this section when notice of a purported manifest injustice is brought to its attention, either by a party or a third party, to review any order to correct a manifest injustice.

*Banzhaf v. Caranation Co.*, 104 Idaho 700, 662 P. 2d 1144 (Idaho 1983); *Page v. McCain Foods, Inc.*, 145 Idaho 302, 179 P. 3d 265 (Idaho 2008). The

Commission has authority under I.C. § 72-719 (3) to reopen a “final and conclusive award.” *Fowler v. City of Rexburg*, 116 Idaho 1, 773 P. 2d 269 (Idaho 1988). Like a compensation agreement, a LSSA approved by the Commission is equivalent to an award under the Idaho Workmen’s Compensation Laws. *Sines v. Appel*, 103 Idaho 9, 644 P. 2d 331 (Idaho 1982).

Claimant’s date of accident was October 18, 2006.

Thus the Commission, having been presented with Claimant’s request to review the LSSA in this matter, has the authority to hold a hearing for consideration of the question of whether the LSSA represents a manifest injustice. If the Commission finds a manifest injustice it has the authority to reopen the claim of Claimant for benefits. The purpose of Idaho’s workers’ compensation statutes is to ensure that victims of industrial accidents receive adequate protection and compensation, and the Commission has broad authority to reopen awards. *Id.*

To briefly reiterate the situation presented to the Commission, the claimant while suffering from extreme stress and duress because of this traumatic brain injury and financial problems, that further decreased his cognitive abilities, accepted the Defendants’ offer, a paltry sum considering his injuries and inability to return to work without a sheltered work environment, to settle the “indemnity side” of his claim. This offer was made just prior to Christmas, and within a month or two of a scheduled hearing before the Industrial Commission. When the



decision was made to accept the offer, the Claimant was told that this offer was “generous”, that he would receive no more money from the Defendants, and that if he went to hearing he would not even receive this amount because he would have to pay large fees to Dr. Stanek and Dan Brownell to testify. Also, the Claimant’s then attorney (Walker) refused to discuss the proposed settlement with Claimant’s father and Social Security Representative Payee.<sup>40</sup>

Claimant’s then attorney (Walker) represented to Defendants that Claimant’s decision to accept the offer was based on Dan Brownell’s vocational rehabilitation report of December 15, 2009. Claimant disavows seeing this rehabilitation report. Claimant’s recollection as to why he agreed to accept the Defendants’ offer is significantly different.

Claimant’s recollection is that his then attorney (Walker) told about the offer of settlement and with regards to that told him as follows:

- a. He advised the Claimant that he should accept this “very generous offer”;
- b. That the Claimant wouldn’t get any more money from them;
- c. That there was a good chance he would end up owing a lot of money to

Dr. Stanek and Dan Brownell if they had to testify.

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<sup>40</sup> See attached Affidavit of Starr Kelso, Exhibit 34. This information is being presented in this format because the undersigned does not feel comfortable placing this information in an affidavit of Claimant because of uncertainty as to whether Claimant is legally competent to testify. Counsel has no reason to dispute Claimant’s representations but has concerns about legal competency to testify. Claimant will be called as a witness to testify at hearing and the Industrial Commission will be in a position at that time to rule on the Claimant’s competency to testify.

d. That Dan Brownell was putting a report together.

Claimant's recollection is that he has never seen a vocational report by Dan Brownell regarding him. Given Dan Brownell's opinion,

"I highly recommend, as has his attending physician, that the claimant be involved in a sheltered employment placement with a job coach assigned: along with a work hardening program in order for this case to resolve successfully."

it is hard to imagine how any claimant in Claimant's shoes would believe that the settlement offer was reasonable, unless his attorney was advising him that this was all the money that he would receive and that if the offer is not accepted, and they have to go to hearing, that he would lose a large portion of this amount because he would owe Dr. Stanek and Dan Brownell "a lot of money."

When the Claimant agreed to the settlement offer he was suffering from the effects of a traumatic closed head injury that affected his mental capacities to understand what was being offered and he was unable to determine on his own whether it was a wise decision. At the time he agreed to Defendants' offer, through the time of the Industrial Commission's approval of the LSSA, not only was Claimant unable to manage his own financial affairs but he was also under extreme stress from his injuries and financial pressures, which exacerbated the effects of his traumatic brain injury. Simply put, he was in no position to agree to the LSSA agreement on his own even with an attorney. His father, his

Representative Payee for his Social Security benefits tried to speak to Claimant's then attorney (Walker), but the door was closed to his involvement in these discussions by that attorney. Why the attorney chose to not speak to Claimant's Representative Payee, his father, and thoroughly discuss the LSSA, is unknown at this time. Perhaps it was because he wanted to get the claim "turned" to get his fee because this case was close to, and proceeding to, a hearing that would have been contentious and no doubt would have entailed the outlay of substantial funds by him, as cost advances, to arrange for and present the necessary medical testimony in support of the Claimant's case. Perhaps it was the fact that Claimant was expressing desperation for money to live on and to pay immediate debts. At this point the reasons are unknown. It is extremely troubling that Claimant's then counsel (Walker), in his representation of his client who sustained a significant traumatic brain injury, would not speak to his client's father and Representative Payee to discuss the proposed settlement.

It is not known what medical information or job status information, concerning the Claimant, that the Commissioners had before them at the time that they reviewed the LSSA. On the information available to the undersigned at this time, it is hard to fathom that the Commissioners, performing their responsibilities to review the LSSA to determine if it is for the best interest of the Claimant, under I. C. § 72-404, would have approved such a LSSA if, at the time of their review,

they had the reports of Dr. Hayes, Dr. Gardner, Dr. Stanek, and Dan W. Brownell before it.

Likewise it is hard to fathom that the Commissioners would have approved the LSSA without the approval of Claimant's father if, at the time of their review, they had been aware that Claimant had a "Representative Payee" who was charged with the responsibility, under the Social Security Administration's rules, to manage Claimant's financial affairs for him.

The LSSA does not contain any reference to whether or not Claimant has returned to work or still undergoing medical care.

While the Claimant certainly was aware that he had suffered a serious closed head injury, was aware that he was "not the same person", and was aware that he had extreme difficulties dealing with stress of any nature, that does not preclude a finding of manifest injustice. *Sines, supra*.

"Manifest" has been defined to mean: capable of being easily understood or recognized at once by the mind; not obscure; obvious. "Injustice" has been defined to mean: absence of justice; violation of right or of the rights of another; iniquity, unfairness; an unjust act or deed; wrong. *Id.*

At the time of his accident the Claimant was receiving an average weekly wage of \$762.73 per week for a monthly average wage of \$3,050.92. With Social Security benefits, and the prorated sum set forth in the LSSA, Claimant, with no

known job prospects, theoretically would receive \$573.92 per month, for the rest of his life.

There should be no doubt that the LSSA, from which the Claimant received the equivalent of \$62.92 per month in one lump sum, where claimant at the time of the settlement was still undergoing medical care and treatment, where Claimant had not yet been returned to the work force or even tried to return to the work force, where Claimant needed a sheltered workshop to even attempt to successfully return to the workforce in any capacity at any wage, and where Claimant has not been able, even now, to return to the work force, represents a “manifest injustice”.

#### AMBIGUITY

The language in the LSSA providing that Claimant is entitled to “time loss benefits relating to any future medical care that is causally related to the October 18, 2006 injury” and the language that Claimant is entitled to “any TTD and/or TPD benefits that Claimant may be entitled to as a result of the causally related future medical treatment”<sup>41</sup> is directly contradictory to the LSSA language that provides that “this Agreement forever concludes and fully and finally disposes of any and all claims for *indemnity* benefits...”<sup>42</sup> (emphasis added).

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<sup>41</sup> See Exhibit 12, LSSA, at pages 2 and 3.

<sup>42</sup> See Exhibit 12, LSSA, at page 9.

The quoted language leaves the reader in doubt as to what lost income/indemnity benefits the Claimants is, or is not, entitled to receive. If Claimant is entitled to indemnity benefits while he receives medical care, his temporary total disability benefits should not have been terminated on December 1, 2008. They should be continuing at this time. The proposed Medical Set Aside, provides for \$96,006.57<sup>43</sup> in future medical costs. It is the undersigned's experience that such proposals are often very conservative and don't fully proved for full payment of the necessary medical costs. A large portion is borne by Medicare and by the Claimant as a result of h is deductible. Also it is unclear what the length of time of treatment would be for Claimant as a result of each item that was addressed. This language makes a blur of the distinction, if there is any, between lost time benefits and indemnity benefits.

Once an ambiguity such as presented by this LSSA is identified the resolution of the ambiguity becomes a question of fact to be decided by the Commission. *Woodvine v. Triangle Dairy, Inc.*, 106 716, 722, 682 P. 2d 1263, 1269 (Idaho 1984).

#### ATTORNEY FEES

IDAPA 17 TITLE 02 CHAPTER 08 at .033 sets forth the Rule Governing approval of attorney fees in workers' compensation cases. In part it provides:

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<sup>43</sup> See attached Exhibit 30.

01. a. "Available funds" means a sum of money to which a charging lien may attach. It shall not include any compensation paid or not disputed to be owed prior to claimant's agreement to retain the attorney. (emphasis added)
- b. On a case on which no hearing on the merits has been held, twenty-five percent of available funds shall be presumed reasonable.

The Disclosure Statement provided to Claimant by his then attorney<sup>44</sup> (Walker) provides, in part,

"attorney fees normally do not exceed 25% of the benefits your attorney obtains for you in a case in which no hearing on the merits has been completed." (emphasis added)

The Fee Agreement between Claimant and Mr. Walker provides has similar language and specifically references "available funds." It provides, in part,

"...of the benefits the attorneys obtain for me from available funds."<sup>45</sup>

The LSSA provides at page 6 paragraph 3 that Claimant is to receive "10% WP" which equates to \$15,537.50. As reflected by the letter dated October 6, 2009 the Defendants paid Claimant's permanent partial impairment benefits, at that rating, in full.

The fact that Claimant suffered an impairment as a result of his industrial accident and injuries was not in dispute. The impairment rating that was assigned by Defendants' medical raters was 10% and that was the percentage that Defendants paid to Claimant.

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<sup>44</sup> See attached Exhibit 11.

<sup>45</sup> See attached Exhibit 10.

Claimant's then attorney (Walker) (Hannon) took no action, known to the undersigned, to "obtain" the payment of the impairment rating benefits (or temporary total disability benefits) for Claimant from Defendants. Claimant did receive an impairment rating from his treating physician, Dr. Stanek, of 18% whole person. Apparently no effort was made by Claimant's then attorney (Walker) to average the two impairment ratings, and no effort was made to litigate the percentage of impairment.

The impairment rating sum of \$15,537.50 was not disputed, at any time, and thus it should not constitute "available funds" from which attorney fees can be charged.

The "available funds" identified in the LSSA amounted to \$54,381.00. Twenty-five percent of this sum equates to \$13,595.25.<sup>46</sup> The LSSA itself reflects that Claimant's then attorney (Walker) collected \$15,275.00 in attorney fees. This represents an overcharge of \$1,679.75 based upon 25% of the LSSA amount.

Correspondence from Claimant's then attorney (Walker) reflect that the Claimant likely paid more attorney fees than identified and listed on the LSSA.<sup>47</sup>

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<sup>46</sup> See Exhibit 12, LSSA. It rounds this sum off to \$13,595.00. The LSSA sum will be used hereafter for consistency.

<sup>47</sup> It is Claimant's recollection, as reflected in the undersigned's affidavit, that his then attorney (Walker), once he started representing him on or about March 13, 2008, about 17 months after the accident and injury, took attorney fees from the temporary total disability benefits that Claimant was receiving. It is his recollection that the checks began to be sent by the surety to Walker and that Walker took attorney fees and sent on the remaining 75%. It is further Claimant's recollection that he argued with Walker about his taking attorney fees out of the temporary total disability checks because he hadn't done anything to obtain them for him. If Walker did take a fee out of the



The letter, with attachment, dated July 31, 2009<sup>48</sup> reflects that as of that date Claimant's then attorney (Walker) had collected \$600.00 from the impairment rating, and "deferred" \$2,190.00 in attorney fees. Claimant's then attorney's (Walker) letter of October 7, 2009<sup>49</sup> reflects that Claimant would have been paid at least two more permanent partial impairment rating benefits and thus the attorney would have receive an additional \$620.00 in fees. Claimant's then attorney (Walker) thus would have received \$3,410.00 in fees from the impairment rating. Twenty-five percent of the impairment rating equates to \$3,884.37. However, if the fees reflected taken (\$3,410.00) are added to the "attorney fees prior to LSS" (\$1,680.00) and the "available funds" fees taken in the LSSA (\$13,595.00 and the "lien" paid to the original attorney (\$1,169.50) the sum of attorney fees is \$19,854.50. This would equate to \$6,259.50 in excess attorney fees.

It is not clear to the undersigned from the LSSA, in conjunction with the then attorney's (Walker) letters, exactly how much Walker charged and received.

It is not known to the undersigned what the basis was for Hannon's claimed "lien". As reflected in the undersigned's affidavit it is Claimant's recollection that Hannon's claim of "lien" was based not on fees claimed due Hannon from Claimant's worker's compensation claim, but rather they represented attorney fees

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temporary total disability checks that Claimant was receiving due to no action by Walker that would also appear to be a violation of the Industrial Commission's rules on attorney fees and a violation of the attorney fee agreement.

<sup>48</sup> See Exhibit 7.

<sup>49</sup> See attached Exhibit 33.

claimed for Hannon's work on a child support issue. The undersigned has not seen any documents or correspondence establishing that any attempt was made by Claimant's then attorney (Walker) to dispute or challenge the claim of Hannon.

It is unclear to the undersigned how Hannon's fees, if the subject of a proper lien, would not have to be identified in the LSSA as being paid from the "available funds." Because Hannon's fees were not listed on the LSSA, and were apparently not charged for legal work in the worker's compensation case but rather on a child support issue in civil court, it is unclear how a "lien" would attach to the "available funds."

I.C. § 72-801 provides, in part,

"...all compensation and claims therefore shall be exempt from all claims of creditors..."

The Industrial Commission held in *Stienmetz v. G2B Co., Inc. and Idaho State Insurance Fund*, I.C. No. 2008-002191,

"Importantly, a charging lien can only attach to available funds where it is demonstrated that the services of the attorney operated "primarily" or "substantially" to secure the fund out of which the attorney seeks to be paid."

Hannon's lien claim, should have been disputed by Walker as not due from the LSSA "available funds." Conversely if Hannon's lien claim was for legal fees due him for his work on Claimant's worker's compensation claim the charged fee

should have been listed in the LSSA and reviewed by the Industrial Commission under the total 25% attorney fee rules.

I.C. § 72-803 provides, in part,

“Claims of attorneys...shall be subject to approval by the commission;...”

The Industrial Commission, based upon the information available to the undersigned, and in the LSSA submitted to it for review, was not provided any information regarding Hannon’s claimed legal fee “lien.”

If Hannon’s claimed legal fee lien represents a claim for attorney fees, the undersigned is unable to appreciate how the Industrial Commission would determine that Hannon’s services operated “primarily” or “substantially” to secure “available funds” for Claimant. It would appear, at a minimum, the Claimant should have been advised by his then attorney (Walker) in writing of his right to dispute Hannon’s claim and assisted him in doing.

Simply put, based upon the information available to the undersigned, at this time, it appears, depending upon what the actual facts may be, that Claimant was charged at least \$2,849.50 more in attorney fees (Hannon’s \$1,169.50 + Walker’s attorney fees taken prior to LSSA \$1,680.00 = \$2,849.50) than he should have been charged. Also the record could reflect that the Claimant was potentially

charged at least \$6,259.50 more<sup>50</sup> in attorney fees than he should have been charged.

### CONCLUSION

While the LSSA terminology is ambiguous it should be clear, when the information above set forth is considered, that the payment of \$62.92 per month in a single lump sum payment to Claimant, given his state of being severely brain damaged, given his being severely mentally impacted, given his need of further and ongoing medical care, and given his inability to be gainfully employed in any occupation, is a manifest injustice. It should further be clear, based upon the decreased mental ability of the Claimant to manage his own financial affairs at the time of the offer, the acceptance of the offer, and the signing of the LSSA, that it was imprudent, and improper, for the offer of Defendants to be accepted, the LSSA signed, and the LSSA approved by the Industrial Commission, without the approval of Claimant's "Representative Payee." The LSSA should be set aside upon these facts alone. If it further is found by the Industrial Commission that Claimant's recollections, regarding how the offer was presented to him for consideration by his then attorney (Walker) are true, the Commission should set aside the LSSA.

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<sup>50</sup> This figure obviously does not include any fees that Mr. Walker apparently took from Claimant's temporary total disability benefits. It is also unclear where or how the fees taken from the permanent partial impairment rating benefits are accounted for.

The Commission should Order a full hearing on all aspects of the LSSA at which all evidence bearing on the question of manifest injustice, and the other questions raised herein, can be received and evaluated. This thorough hearing is necessary so that the Commission can resolve the fundamental issues raised herein under Idaho's workers' compensation laws. Should the Commission decline to undertake this statutorily responsible review, it should, nonetheless Order that a hearing be held on the Claimant's entitlement to payment of his ongoing medical needs, and temporary total disability benefits from the date of their termination and ongoing into the future.

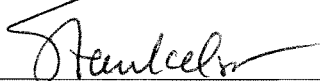
The Industrial Commission should order both of Claimant's attorneys, Hannon and Walker, who each previously represented Claimant in this matter to file with the Industrial Commission, with copy to Claimant's undersigned counsel, at least twenty days before hearing in writing, signed under oath, and with complete copies of receipts and or checks/bank statements in support thereof, a complete itemization of the fees and costs charged, the fees and costs received, and the claimed basis for each of the claimed costs and fees received.<sup>51</sup> This will permit the Claimant an opportunity to determine, with the assistance with counsel, what fees and costs were charged to Claimant and whether the appropriate amount of

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<sup>51</sup> It is submitted that the Industrial Commission, because of these attorneys' prior representation of Claimant in this matter has the authority, as a part of its authority to review attorney fees in workers' compensation matters, to require each of the attorneys to provide this information.

attorney fees and costs were charged to, and appropriately paid by, Claimant to attorneys Hannon and Walker.

DATED this 8 day of July, 2011.

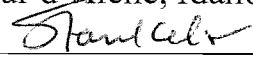
  
\_\_\_\_\_  
Starr Kelso, Attorney for Claimant Morris

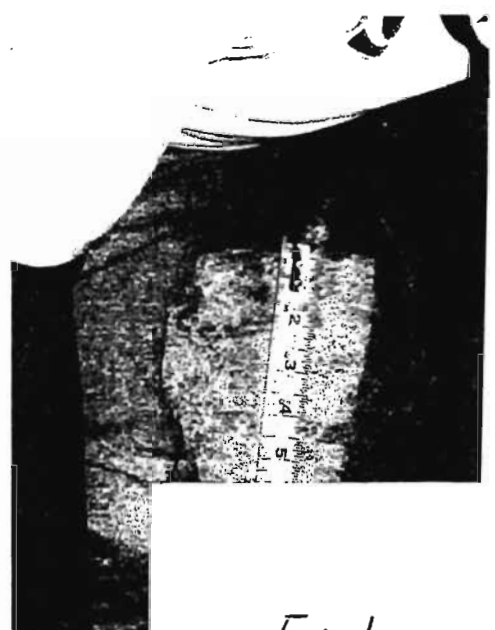
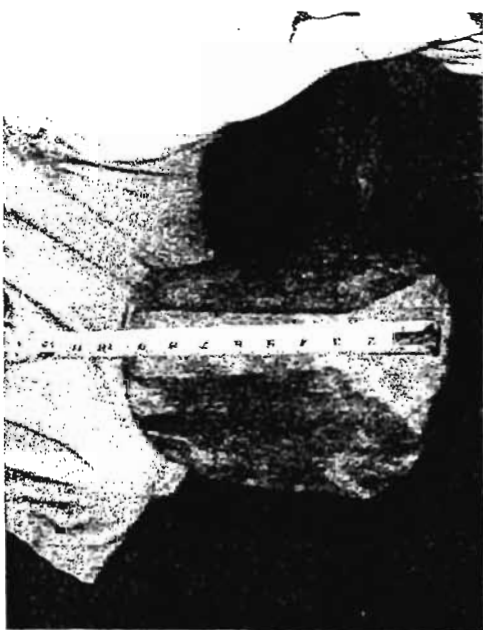
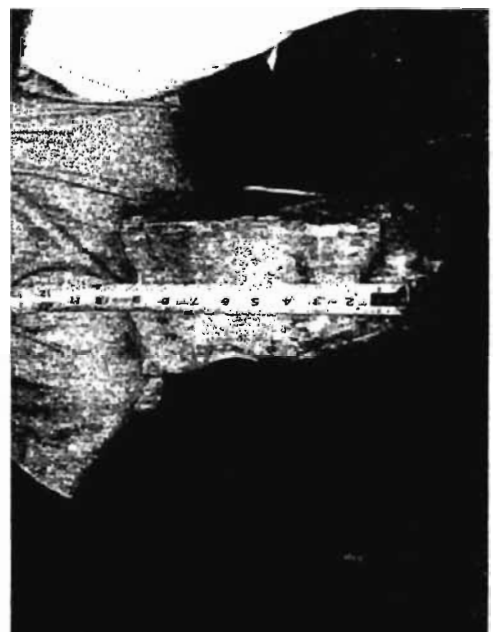
CERTIFICATE OF SERVICE: I certify that a copy was mailed on the 8<sup>th</sup> day of July, 2011 to:

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6213 Cloverdale Rd. Ste. 150  
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Coeur d'Alene, Idaho 83816

  
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Ex 1

**Daniel S. Hayes, Ph.D., L.L.C. and Associates**

DANIEL S. HAYES, PH.D., L.L.C.; PSYCHOLOGY

Ψ JOHN A. WOLFE, PH.D.; NEUROPSYCHOLOGY

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**PSYCHOLOGICAL CONSULTATION**

**Patient:** Benjamin Morris  
**Age:** 30  
**Gender:** male  
**Date of Birth:** [REDACTED]  
**Education:** 12<sup>th</sup> grade plus some college  
**Occupation:** Workman's compensation  
**Marital Status:** single, never married, has two children  
**Date(s) of Service:** 07-17-2007

**Previous Physical Diagnoses:** 10-18-2006 industrial-related closed head injury, whiplash, TMJ, and broken nose

**Previous Psychological Diagnoses:** Currently reports symptoms of anxiety and depression.

**Substance Abuse:** Admits to previous alcohol-related problems. When he was about 28, he admits he "couldn't stop drinking." Since his injury he has used alcohol twice: once at Christmas, and once on the Fourth of July. Denies substance abuse. Admits to some marijuana use in high school.

**Current Medications:** Effexor, Ability, Buspar, Lorazepam, Oxycodone for pain, muscle relaxant, and medications for "horrific nightmares."

**Referral:** Benjamin Morris is a 30-year-old male referred for a psychology consultation to provide an opinion regarding his current mental and cognitive status, diagnosis, and recommendations. According to Mr. Morris, prior to his industrial related injury he was accused of violating a number of no-contact orders for a significant other with whom he had had an relationship for about five years. The difficulties in this relationship had become problematic in the last six months of their relationship. He has been charged with "stalking in the first." He denies ever physically harming or being aggressive with this individual. He describes the relationship as "rocky" with lots of discord, with each of them placing no-contact orders on each other. He describes her as physically and mentally abusive towards him, with the relationship being "on and off" for some time. She would accuse him of cheating and behave erratically. He states that she was diagnosed with Bipolar Disorder and when off her medication became unstable. His father, Harold, who also was interviewed as part of the evaluation process, witnessed the significant other "attacking" Mr. Morris. Mr. Morris has not had any contact with her since December of 2006.

Father notes that Mr. Morris' personality has changed significantly since the industrial-related injury, from being "mellow," pleasant, "clowning around" and "happy-go-lucky" to being "loud," anxious and excitable who has a hard time "getting things sorted out" and becomes overwhelmed easily, particularly if things don't "go right." He feels his son is only "about 53% back" to his premorbid state. Premorbidly his son never caused any great problems, was a C-D grade level student who was in special education for English and math. Since the injury, his son has a hard time comprehending and becomes frustrated. Activities that were second nature to him premorbidly, such as operating a motor vehicle, are now challenging and require a great deal of effort to maintain his focus. Both father and Benjamin report that he is independent in his self care, without needing to be reminded. Father feels he is unable to function independently at this point and would have trouble managing his own medications. His daily living skills are inconsistent. Mr.

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Morris needs help in managing his personal, financial and medical affairs. His current significant other assists him in managing his money. He tends to be forgetful, lose things, and have memory difficulties. He is able to operate a motor vehicle in a safe manner, in his father's opinion, but he "has to stay totally focused." His abstract reasoning, logical analysis, and immediate problem solving skills appear to be impaired, and he has a hard time expressing himself clearly. He gets frustrated because "things won't come out right." For months, he had severe headaches and was sensitive to bright light and loud sounds. Father feels his son cannot currently make it on his own. He has problems following instructions. He has not been violent or aggressive, but can get loud and often provokes reactions from others. He does not seem to screen what he says very effectively.

**Background Information:** Mr. Morris was born in Pullman, Washington. He is the youngest of seven children. He has two biological children and four half siblings. He was a full term baby in good health at birth, reporting no significant illness or injuries in infancy and early childhood. His developmental milestones were met within normal limits. He denies any traumas and upsetting events. He denies any abuse of a mental, physical, or sexual nature throughout his life. His home life was good during his early childhood.

He maintained good health physically in elementary school and junior high years. He reports no significant psychological or emotional difficulties. His family moved quite a bit, so it was hard for him to make and maintain friendships. He was able to successfully have relationships. He struggled academically and was in special education. He denies any attention or concentration difficulties or behavior problems. He denies fights or aggressiveness, describing himself as a class clown, somewhat immature. "It took me more time to mature than others." He denies any community problems, alcohol or substance use, and conflicts or tension in the home. He reports good adjustment in the home setting. Father states that he was always "a pleasure." He experienced two upsetting events during this period in his life. Their house burned down and they lost everything, which was very upsetting to the family, and his dog, to which he was very close, died.

He maintained good health physically, psychologically and emotionally in high school. He used some alcohol, tried some marijuana with friends. He was in special education through 10<sup>th</sup> grade. He feels now that he had more friends than he realized at the time. He settled down in school to some degree. He denies any home or community difficulties. He denies any traumas or upsetting events in his adolescence.

He graduated from high school. His first child was born when Mr. Morris was 19. His second child was conceived during a "one-night stand in college" with a different woman. That child is 2-1/2 years old at this time. He denies any serious illnesses or injuries in his 20s until the industrial-related accident in October of 2006. He denies any significant psychological or emotional difficulties prior to that time. He describes himself as having a "hard time growing up," tending to mature later than his peers. He always worked, climbed "to the top" quickly in his jobs, worked steadily, and had "normal" relationships. He admits to some drinking problems at age 28, but denies any community difficulties prior to the problems in his relationship with his significant other.

Mr. Morris was involved in an industrial related injury on 10-18-2006 while doing pipe work at an excavation site. A rock weighing approximately 25 pounds was thrown by a piece of machinery and struck Mr. Morris in the head. He fell forward onto his face and was briefly unconscious. He had altered states of consciousness for a significant but unspecified length of time afterwards. He recalls the rock flying through the air and hitting him, then he recalls "waking up on the ground." His coworkers reported to him that he was "pretty agitated." Father states that his father was quite different in the immediate aftermath of the accident and is still "not the same," estimating that he is "about 53% back."

Mr. Morris is seeing Dr. Stanek for follow up treatment for closed head injury. Her reports indicate that he sustained a whiplash injury, had severe daily headaches, bilateral TMJ pain, neck pain, intolerance of bright lights, and intolerance of loud noises. He has been attending physical and speech therapy at Kootenai Medical Center twice a week.

His father notes that sometimes Mr. Morris "needs to be left alone" in order to calm down. Family reports some memory problems and impaired balance. Family and friends have indicated that he has changed and is not the same person he was, in both personality and behaviors.

His records note mild cognitive difficulties including memory impairment and slowed processing. He also experiences intolerance of bright lights and loud noise, as well as depression and anxiety.

Mr. Morris reports difficulty sleeping and "horrific dreams and nightmares." He reports becoming irritated easily, and increased agitation and anger. He does not report a significant psychiatric history. He admits to some alcohol related difficulties at age 28. He describes a somewhat tumultuous relationship with his previous significant other. He reports his mood is depressed. He denies any suicidal ideation, intent, or plan and any history of suicide attempts. He describes himself currently as jumpy, irritable and edgy, easy frustrated, and feeling overwhelmed and helpless in his current situation. He continues to experience cognitive problems, including decreased ability to concentrate and focus, decreased ability to explain complex thoughts, problems performing mathematical computations, difficulty planning and organizing his daily schedule, and an inability to multitask. "I can only do one thing at a time."

**Findings:** Mr. Morris was evaluated on 07-17-2007 in the privacy of my office in Coeur d'Alene, Idaho. Evaluation procedures included Diagnostic Interview, History, Interview with Mr. Morris' father, Harold, Mental Status Examination, Structured Clinical Interview (MINI), Millon Clinical Multiaxial Inventory III, and Review of Records.

Mr. Morris arrived for the appointment on time. He was accompanied by his father, Harold, who also was interviewed as part of the evaluation process. Mr. Morris was casually but appropriately dressed and groomed. His eye contact was good. He seemed rather excitable and spoke in a loud, piercing voice. His thinking was disorganized, scattered, hard to follow and confusing. He tended to overelaborate in his responses, at times failing to get to the point. At times he would struggle with goal directed associations of thought. His voice got louder with excitement, emotions or frustration. Father reports that Mr. Morris was knocked unconscious in the accident and had altered states of consciousness for a significant length of time in the immediate aftermath. "It is not Ben anymore." There is evidence of continued cognitive impairment as well as personality changes. Mr. Morris tended to be cooperative in the evaluation, with some lability of affect and mood. There was no evidence of disturbances of perception, thought, or mood, which would have been suggestive of a psychotic disorder. There were noted difficulties in productivity and continuity of thought.

Mr. Morris is being evaluated by my associate, neuropsychologist John A. Wolfe, Ph.D., to formally assess his cognitive functioning. Therefore, although cognitive deficits are obvious in this individual, my current evaluation does not focus on cognitive issues.

Based on the information gathered thus far, Mr. Morris appears to meet the criteria for a number of clinical syndromal patterns as defined by the DSM-IV.

- Cognitive Disorder as a result of traumatic brain injury. Specific evaluation in this area is being completed by John A. Wolfe, Ph.D., Neuropsychologist. Results will be made available as an addendum to this report. Based on information provided by Mr. Morris, his father, Dr. Stanek, and my personal observations, Mr. Morris appears to be experiencing diminished cognitive functioning, and an organic brain syndrome is suggested.
- Personality Changes as a result of traumatic brain injury, labile type. There is evidence to suggest persistent personality disturbance which represents a significant change from Mr.

Morris' previous character and personality patterns since his traumatic brain injury. The predominant feature is affective lability.

- Depressive Disorder. Mr. Morris appears to be experiencing depression characterized by decreased interests, motivation and enjoyment since his industrial related injury. He feels a lot of factors contribute to his depression. "I have no control." At times his mood is characterized by talking and moving more slowly, being tired and without energy, feeling worthless, having difficulty concentrating and making decisions and repeatedly thinking he would be better off dead. At other times his symptoms include restlessness and having trouble sitting still. This is the first time in his life he has experienced a significant depression. It appears to be related to adjustment and recovery difficulties. He has considered numerous times that he would have been better off if the accident had killed him, has wished he were dead, at times wanting to harm himself, having suicidal thoughts and a plan of going into the garage with the car running or jumping off a bridge. He has taken no steps to follow through with these thoughts. Although he has been suicidal and has wished as recently as two weeks ago that he had been killed in the accident, he does not currently wish to harm himself and does not have a suicide plan or intention at this time.
- Anxiety Disorder with panic and generalized features. The patient reports panic, somatic preoccupation and focus, and generalized anxiety since the accident. He has experienced sudden attacks of anxiety at unexpected times and in an unpredictable, unprovoked manner. He complains of pounding heart, trembling, shaking, sweating and clammy hands, shortness of breath, dyspnea, GI distress, dizziness, unsteadiness, and having feelings that are strange, unreal, detached, and unfamiliar. He has questioned whether he was losing control, going crazy, or dying. He has had these experiences daily if not taking his medications. "I have to take medications just to be able to sit down and relax." When not having panic-like episodes, he continues to feel generally worried and anxious and has difficulty controlling these worries. He feels they interfere with his ability to focus on what he is doing. He feels restless, irritable, on edge, tense, wound up, and has difficulty concentrating, with his mind at times going blank. He sometimes has difficulty falling asleep, awakens in the middle of the night unable to fall back to sleep, or has early morning awakening; and sometimes he sleeps excessively.
- Alcohol Abuse. Mr. Morris denies any significant alcohol consumption since his industrial injury in 2006. He identifies himself as having a drinking problem at age 28 and seems to meet the criteria for Alcohol Abuse as a result of that experience. He admits to needing to drink more to get the same effects that he got when he first started, suggesting a tolerance built to the alcohol. He admits that when he drank, he often ended up drinking more than he had planned to. He also notes that in the past, but not currently, he had trouble reducing or stopping his drinking. On days when he did drink, he spent substantial time obtaining alcohol or recovering from its effects. He admits to being intoxicated, high, or hung over more than once when he had other responsibilities and has put himself and others at physical risk as a result, for example admitting to getting one DUI at age 21. He continued to drink despite the fact that he and others were concerned about its health effects.
- It could not be clearly established, but one may want to consider the possibility of a diagnosis of Post Traumatic Stress Disorder. He reports two significant events: one was his industrial related injury; the other is the fact that his half sister was murdered when he was about 24. He felt helpless during and in the aftermath of both incidents and reports that he relives his head injury every day "like it happened yesterday." He feels anxious, frustrated, angry, and at times avoids people. It is difficult to clarify the extent to which his symptoms are related to PTSD versus changes as a result of his traumatic brain injury. This should be kept in mind as he recovers and greater clarity can be brought to this question.

**Impressions:** Benjamin Morris was evaluated on 07-17-2007 in the privacy of my office in Coeur d'Alene, Idaho. Evaluation procedures included Diagnostic Interview, History, Interview with Mr. Morris' father, Harold, Mental Status Examination, Structured Clinical Interview (MINI), Millon

Clinical Multiaxial Inventory III, and Review of Records. It should be reiterated that John A. Wolfe, Ph.D., Neuropsychologist, is completing a cognitive evaluation of this individual, and the results of that evaluation will be provided as an addendum to this report.

Although the events of Mr. Morris' alleged offense occurred prior to his industrial-related injury and therefore his injury and resultant deficits do not directly pertain to the charges against him, it is important to consider his current condition because it has relevance to recommendations for his treatment. There are several things to consider. Dr. Wolfe, Dr. Stanek and I are all in agreement with the following.

1. Mr. Morris is still recovering from his closed head injury, which occurred less than a year ago, in October of 2006. Therefore, he is still in a critical stage of recovery. He is being treated by Dr. Stanek and others for his physical condition. If he is sent to Cottonwood or prison, it is likely to create significant problems from a medical point of view for his recovery, for the prison system in terms of management of this individual who requires rather extensive medical care, and in its impact on his ability to cope. He is cognitively impaired from a traumatic brain injury and is unable to function independently. Unless the incarcerating system has a very clear understanding of the impact of head injuries on one's behaviors and of the required treatment of head injuries, this individual is not likely to be anything other than a drain on the available resources in that system, particularly as he is in a critical stage of recovery. This is not to say that he should be given a free pass or not be held accountable for any charges for which he is convicted. Rather, it is to say that incarcerating him is not likely to be in the best interest of Mr. Morris, the incarcerating facility, or other individuals in the program. It can be said that this is not even the same person who allegedly committed the offenses with which he has been charged.
2. His diminished cognitive functioning is likely to negatively impact his ability to benefit from the rehabilitative functions in incarceration.

**Diagnosis:**

Cognitive Disorder as a result of traumatic brain injury

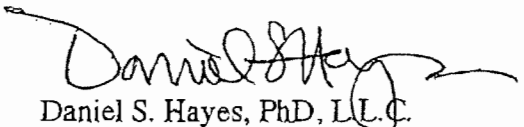
Personality Changes as a result of traumatic brain injury, labile type

Depressive Disorder related to post head injury adjustment

Anxiety Disorder with panic and generalized features related to post head injury adjustment

Alcohol Abuse not current

Rule/out Post Traumatic Stress Disorder



Daniel S. Hayes, PhD, LL.C.

Psychologist

DSH/kenh

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**John A. Wolfe PhD, Associate**

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**NEUROPSYCHOLOGICAL EVALUATION**

**NAME:** Benjamin Morris  
**DATE OF BIRTH:** [REDACTED] (31-0)  
**DATE OF EVALUATION:** 4/27, 6/18, & 7/30/07  
**REFERRED BY:** Karen Stanek M.D  
**REFERRAL REASON:** neuropsychological evaluation; evaluation and treat

**BRIEF HISTORY OF ILLNESS:**

Benjamin Morris is a 31 year old right-handed male who presented to the initial evaluation unaccompanied and he served as the primary historian. He reported that on 10/18/06 he was injured while doing pipe work in an excavation site. He states a twenty five pound rock was thrown by a machine which struck him in the head. He was thrown on his face and reports having a brief loss of consciousness. He states he recalls the rock hitting him, flying through the air, and his next recollection is of "waking up on the ground." He has recollections of blood dripping from his face, feeling numb all over, having a seizure-like reaction and trying to stand up but being unable to. He indicates that co-workers told him that "I was pretty aggravated," at that time.

Review of medical records indicated that he was seen by Dr. Stanek on 3/8/07 and that this was a return visit for reevaluation of therapy and medications. This record notes history consistent with what the patient stated. It also notes that he sustained a whiplash type injury, complained of severe daily headaches, bilateral TMJ pain, neck pain and intolerance to bright light and loud noises. This note suggests that he was seen by Dr. Gilbert and diagnosed with TMJ arthralgia and referred for treatment. Medications at that time were noted to be Naproxen 500 mg bid, Flexeril 10 mg TID, Percocet 5 mg, BuSpar 5 mg TID, Seroquel 25 mg QHS with some reports of diminished cognition. He had been attending PT and ST at Kootenai medical center twice a week. His mini-mental status exam score was thirty out of thirty. There were reports of difficulty with sleep, becoming irritated easily, increased agitation and anger, and Dr. Stanek notes that his father who accompanied him to that evaluation indicated that at times the patient needed to be left alone in order to calm down. There were notes of mild cognitive difficulties with memory impairment, decreased speed of processing, and intolerance of bright light and loud noises as well as depression and anxiety. Seroquel was decreased and Robaxin was added with return to clinic in one month. He was seen by Dr. Stanek on 4/9/07 where he was

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accompanied by his girlfriend who apparently witnessed an event at night when he had arm and leg shaking. He apparently did not fall asleep or have bowel or bladder incontinence and this had happened a couple of times over the previous months. Family was reporting some memory problems and impaired balance. At that point in time he was alert and oriented and scored twenty six out of thirty on the mini-mental status exam with difficulties in problem solving attention and calculation. He showed slowed speed of processing in naming five animals and six foods in fifteen seconds. Recommendation was again for counseling and in addition a neuropsychological evaluation was also requested. Memory strategies were reviewed and a referral was made to a neurologist to evaluate for possible seizures. Medication changes included Trazodone to help with sleep with 25 mg in the morning and 25 mg in the afternoon as needed for agitation and anxiety. He was taking an additional 100 mg at bedtime.

Medical history obtained from the patient indicates that his primary care physician is Dr. Ludwig who started him on Risperdal although he gained thirty five pounds on this medication. He was changed to Seroquel but also experienced a weight gain and became reluctant to take these types of medications. Most recently reported medications include Effexor, Abilify, Buspar, Lorazepam, Oxycodone, and a muscle relaxer. There were no complications reported during his mother's pregnancy with him or during delivery and he achieved developmental milestones within expected timeframes.

Educationally he initially reported that he graduated from high school with "good grades," and that he was never held back or diagnosed with a learning disability. Further information would suggest that he did have some difficulty with math and had to take an extra semester of classes due to his GPA. He apparently was in special education programs for math and English through the 10<sup>th</sup> grade and did struggle academically.

Vocationally he reports that he has worked primarily in construction and that he was fired from his job where he was injured on 12/1/06 for "insubordination." He states that after his injury he was returned to light duty but feels as if he was pressured by supervisors through the tasks that he was assigned to do. He indicated that they were trying to "pressure to get me to quit."

Functionally, history suggests that he is able to complete basic self-care adequately, but he has difficulty with managing complex tasks such as his medication and finances and he receives assistance from his significant other. He is reported to have difficulty with his memory, maintaining his focus of attention, expressing himself clearly, and that he now becomes easily frustrated. He has not become violent or aggressive, but is more likely to be loud and not "screen" what he says.

He denies any history of emotional or physical trauma during his youth and adolescence. With regard to psychiatric history he reported that he has been in a somewhat tumultuous relationship with a previous girlfriend. He sought counseling when she reported an alleged rape incident and saw a therapist through the woman's center. Currently he reports that his mood is somewhat depressed and

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he indicates that he has extremely poor sleep. He indicates that "I have really bad dreams," with some themes of his parents dying, hell on earth, and being chased. He denies any prior history of suicide attempts. He indicates that while he has had some thoughts over the past several months he denies any current plans or intent. He does indicate that he feels somewhat helpless in his current situation, frustrated with the treatment he has received at his job and by insurance companies, that he is jumpy, irritable, and edgy. He indicated that he is easily startled by noises and that when he is startled he will "snap my head around-it hurts my neck."

He reports occasional marijuana usage of an experimental or trial nature when he was in high school. He acknowledges some history of excessive drinking until around the age of 28 but denies regular usage after his injury.

When questioned about his primary goals or issues/problems he indicated that he was frustrated with the Workman's Comp system which ultimately led him to retain an attorney in order to process his claims and obtain the therapy and treatment he feels he needs. He also indicates that friends "I've known for a long time say I've changed," and stated that they have told him he is more forgetful, has had personality changes, and also has behavioral issues which he indicates are in regard to irritability and temper. He also indicates that he has cognitive problems including decreased ability to focus and concentrate, decreased ability to explain complex thoughts, more trouble completing arithmetic problems than he had previously, and difficulty with planning and organizing his daily schedule. He also reports that "I can do one thing at a time and that's it." He described himself feeling somewhat overwhelmed when trying to do multiple tasks at the same time.

**BEHAVIORAL OBSERVATIONS:**

The patient presented a few minutes late to his initial appointment but was essentially on time. He was found to be casually dressed and adequately groomed. Affect was somewhat angry about his work and injury situation but he could show a range and it was generally modulated and under control. Mood appeared to be somewhat dysthymic. There was no overt evidence of psychotic features such as hallucinations or delusions and he denied history of such symptoms. He denied current suicidal thoughts, plans, or intent although he did acknowledge having had some thoughts a few months ago. Speech was found to be fluent and was logical and goal directed. During the testing sessions, he was late for his first session and indicated that he had gotten confused about the time he was supposed to arrive. During the testing sessions it was found that on reading tasks he worked very slowly and on other verbal tasks (e.g., vocabulary) his responses were somewhat hesitant. On problem solving tasks, he appeared to try and put in good effort and stay on task, but became visibly frustrated as they progressed. He appeared to have difficulty with sensory tasks and was noted to be restless and fidgety during some of the attentional measures.

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#### TESTS ADMINISTERED:

Wechsler Adult Intelligence Scale III, Wechsler Memory Scale III, California Verbal Learning Test II, Rey Osterrieth Complex Figure, Conner's Continuous Performance Test II, Wide Range Achievement Test III, Controlled Oral Word Association, Halstead Battery, Wisconsin Card Sorting Test, Lafayette Grooved Pegboard, Beck Depression Inventory II, Beck Anxiety Inventory, Stroop Test.

Where possible, scores have been corrected for age and educational factors. Standard Scores and Index Scores have a mean of 100 and a standard deviation of 15. Scale Scores have a mean of 10 and a standard deviation of 3. T scores have a mean of 50 and a standard deviation of 10.

#### TEST RESULTS:

On the Halstead **Impairment Index** his score of .7 is suggestive of a moderately impaired performance on the component tasks (discussed in applicable sections below).

On measures of **attention**, performance on the Working Memory Index (standard score = 78) was found to be in the mild to moderately impaired range. This measure is a composite score from tasks which require him to attend to information, to hold briefly and process that information in memory, and then to formulate a response. Performance on the Conner's found that attentional abilities were strongly suggestive of attentional difficulties and the chances were 99.9 out of a 100 that his profile was clinical rather than nonclinical in nature. He was found to have poor consistency in his responses and to be both fast and inaccurate. As the test continued his reaction times slowed considerably suggesting difficulty with maintaining his attention over time. It was also found that he had difficulty when the presentation rate was varied which suggests limitations in the ability to adjust to changing task demands.

On measures of **memory** functioning it was found that on a comprehensive battery (WMS-III), the General Memory Index was in the average range. This Index Score is typically viewed as the best global score indicator within this instrument of the person's ability to recall information at delayed intervals and is a combination of visual and auditory information under both free recall and recognition conditions. There was however, a trend for visual memory measures to be in the low average range with verbal measures to be in the average range. The Primary Index Scores were found to be:



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Primary Index	Index Score	Percentile Ranking	Qualitative Description
<b>Auditory Immediate</b>	94	34	Average
<b>Visual Immediate</b>	84	14	Low Average
<b>Immediate Memory</b>	87	19	Low Average
<b>Auditory Delayed</b>	99	47	Average
<b>Visual Delayed</b>	84	14	Low Average
<b>Auditory Recognition Delayed</b>	95	37	Average
<b>General Memory</b>	91	27	Average
<b>Working Memory</b>	83	13	Low Average

On a 16 item verbal list-learning task his ability to learn the words across five acquisition trials was in the severely impaired range (13 T) and inconsistent across trials. His performance on short delayed free recall was found to be in the moderately impaired range. Following a 20 minute delay he could not recall any of the words spontaneously. With use of a delayed recognition format he made 11 correct identifications (5 false positives) which is also far below expectation. Forced choice resulted in his being 100% accurate which may suggest difficulty with retrieval processes. On a visual memory measure in which he copies and subsequently recalls a geometric design, his copy was found to be in the expected range for accuracy and speed. Both immediate and 30 minute delayed free recall were found to be in the above average range (58 and 60 T). Use of a delayed recognition format found his performance to be in the average range (54 T).

His performance on an individually administered measure of **intellectual capacity** found a Full Scale IQ of 95 (average range). Examination of subtest performance found a Verbal IQ of 97 (average range) and a Performance IQ of 92 (average range). The verbal scale measures acquired knowledge, verbal reasoning, and attention to verbal materials. The performance scale is a measure of fluid reasoning, spatial processing, attentiveness to detail, and visual-motor integration. His performance on the specific individual subtests as well as the Primary Index scores was found to be:

Verbal Subtest	Scaled Score	Percentile Ranking	Performance Subtest	Scaled Score	Percentile Ranking
<b>Vocabulary</b>	9	37	<b>Picture Completion</b>	9	37
<b>Similarities</b>	11	63	<b>Digit Symbol-Coding</b>	6	9
<b>Arithmetic</b>	6	9	<b>Block Design</b>	9	37
<b>Digit Span</b>	8	25	<b>Matrix Reasoning</b>	10	50
<b>Information</b>	13	84	<b>Picture Arrange.</b>	11	63
<b>Comprehension</b>	11	63	<b>Symbol Search</b>	6	9
<b>Letter-Number</b>	5	5			

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Sequencing					
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Index Summary Scores	Index Score	Percentile Ranking
Verbal Comprehension	105	63
Perceptual Organization	95	37
Working Memory	78	7
Processing Speed	79	8

On a measure of **academic performance**, it was found that single word reading level was in the average range, spelling was in the low average range, and arithmetic was in the mildly impaired range. Comparison of these achievement scores to obtained intellectual scores suggest that while reading and spelling scores were generally in the expected range, his performance on arithmetic was lower than would be expected. This may not reflect a change however, as he is reported to have had a longstanding difficulty with arithmetic. Specific achievement scores were found to be:

	Standard Score	Grade Level
Reading	90	HS
Spelling	89	8
Arithmetic	77	5

On an additional **language** measure of complex confrontation naming, his performance was found to be in the average range (46 T).

On a **psychomotor speed** task his performance was mildly below expectation for his dominant right hand and in the expected range for his left. **Grip strength** was quite good bilaterally although his dominant hand did not show the expected 10% level of better performance. **Dexterity** measures showed a slightly lower dominant hand performance (42 T) relative to his nondominant hand (53 T).

On **basic sensory** testing his performance on bilateral simultaneous sensory stimulation was intact in the tactile, auditory, and visual modalities. On more complex tactile tasks it was found that he made a significant number of errors on finger recognition with his nondominant hand (left) and a similar pattern was found on finger-tip number writing.

On **visual perceptual and visual constructional** measures his Perceptual Organization Index (standard score = 95) was found to be in the average range. This index is a measure of nonverbal, fluid reasoning, attentiveness to detail and visual-motor integration. Since most of the subtests which comprise this index don't require quick responses, it is more a measure of visual-spatial problem

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solving. His performance on the Processing Speed Index, a measure which requires the rapid visual scanning of stimuli and a motor response was found to be in the mildly impaired range (standard score = 79). On the TPT it was found that his performance with his dominant hand, nondominant hand, and both hands together were all below expectation and his subsequent recall for the shapes and localization were also below expectation. Anecdotally it was observed that he became quite frustrated with this task. On a visual spatial task which does not require a motoric response, his performance was found to be in the expected range.

His performance on **executive function** measures found that he was variable in his performance across tasks. His ability to generate words to a restricted phonemic category was found to be in the moderately impaired range (27 T). The ability to mentally sequence two sets of information and alternate efficiently between them was found to be in the severely impaired range (<25 T). On a task in which he must determine a "principle" by which to solve a series of problems, his performance (Category = 62 errors) was in the impaired range. However, on a different and also complex measure in which he must generate a solution to a novel problem, implement the solution, and then modify it in response to environmental feedback it was found that his performance was within the expected range. Specific scores for that task are as follows (higher scores reflect better performance):

Domain	Raw Score	Percentile	T Score	Descriptor
Categories Completed	6	>16		Expected
Total Errors	13	70	55	Average
Perseverative Responses	8	73	56	Above Average
Perseverative Errors	7	75	57	Above Average
Nonperseverative Errors	6	66	54	Average
Failure to Maintain Set	0	>16		Expected

His responses on self-report measures of **depression and anxiety** suggest relatively elevated levels of both.

**SUMMARY AND CONCLUSIONS:**

Benjamin Morris is a thirty-year-old male whose known psychosocial and medical history is reviewed more extensively above. He presented with a relatively complicated history including reports of a work related injury in which he was hit in the head by a large rock and briefly knocked out, and physical symptoms as well as cognitive symptoms as a result which are described in more detail above. His family and girlfriend have reported to other providers that they have noticed difficulty with increased irritability and other personality changes since his injury. He also reports having had depression since that time which has been somewhat problematic and has included poor sleep. He is

**Ben Morris**

**Neuropsychological Evaluation**

**April 18, June 18, & July 30, 2007**

**Page 8 of 10**

currently taking Trazodone which appears to be for treatment of these sleep issues and to manage agitation levels rather than for treatment of depression. He is also on an antidepressant and an anti-anxiety medication at this time as well. He denies use of alcohol since last December, but does report having had some alcohol related episodes prior to this and in the more remote past. Additional stressors include sequelae to a conflictual relationship with an ex-girlfriend which predated his current injury.

The results of the present neuropsychological evaluation are interpreted in the context of an individual estimated to have functioned in the low average to average range of ability based on known vocational and academic achievement. His score on the Halstead Impairment Index (.7) was in the moderately impaired range and his scores on the 4 tests found to be most correlated with cerebral deficits (Impairment Index, Category Test, TPT localization, and Trails B) were all in the impaired range. His scores on a measure of intellectual functioning (of which many subtests are relatively resilient to changes following head injury) did find that his full scale IQ was in the average range which is consistent with expectation. His arithmetic score appeared to be consistent with his known premorbid difficulties in this area. However, on the tasks on that instrument which required attention (working memory) and visual motor speed, his performance was below expectation. On other measures of attention it was found that his performance was strongly suggestive of impairments and he was found to have difficulty with sustaining his attention for extended periods of time, adjusting his attention to changing task demands, and being consistent in responding. While on a general memory battery most of his scores were in the low average to average range, there was a tendency for verbal tasks to be slightly better than visual tasks. Follow up testing with additional instruments however found the reverse to be true and overall, it appears as if he does have some mild to at times moderate difficulty with memory which can be somewhat variable. On motor measures, there was a slight tendency toward a dominant hand deficiency. On sensory testing there was a strong indication of poor performance with his left hand which is typically viewed as consistent with posterior right hemisphere functions. Executive functioning while somewhat variable across tasks, was found to be below expectation on most measures. On a screening instrument for features of depression and anxiety his scores were elevated in both domains.

Diagnostically, there would appear to be evidence of cognitive impairment consistent with his history of a TBI. In addition to the reported cognitive deficits, he also appears to have had some personality changes which are also frequently seen following this type of injury as well as depressive features and anxiety. He denies current alcohol abuse, but does appear to have had evidence of this in the past. He is reported to have had both PT and ST in the past but continues to have evidence of the above difficulties.

**Ben Morris**  
**Neuropsychological Evaluation**  
**April 18, June 18, & July 30, 2007**  
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Based on available history and information the following DSM-IV diagnostic impression is made:

Axis I:	294.9 Cognitive Disorder, NOS 310.1 Personality Change Due to due to head injury 296.22 Major Depressive Disorder, Single Episode, Moderate to Severe
Axis II:	Deferred to Psychological Evaluation
Axis III:	Head Injury
Axis IV:	Legal, Medical, Financial, Relational
Axis V:	GAF = 50-60

### **RECOMMENDATIONS:**

Based on the above clinical history and observations and neuropsychological assessment results the following recommendations are made:

1. Education will be offered to the patient with regards to the above findings and the suggested recommendations.
2. The present results are considered to be an adequate baseline of the patient's current neuropsychological functioning. Future evaluations, with comparison to the current results would give a better representation of any ongoing cognitive changes or declines.
3. He is reported to have had some speech therapy in the past although no records were currently available for review with regard to whether he would benefit from further intervention regarding his cognition.
4. It is suspected that to some extent, his current depression is impacting his functional abilities and it is recommended that he participate in psychotherapy which would address a variety of aspects of his current situation including his mood, improving relationship status, adequately coping with the stresses of his legal situation, and his sense of frustration over the changes in his cognitive status.

Ben Morris

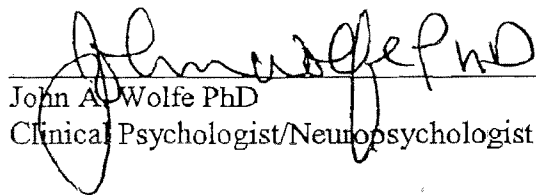
**Neuropsychological Evaluation**

April 18, June 18, & July 30, 2007

Page 10 of 10

5. It is suggested that he be referred to Vocational Rehabilitation in order to develop a vocational plan which would address his current cognitive and emotional status. Should Mr. Morris sign the appropriate consents, the results of this evaluation could provide guidance into formulating that plan.

Thank you for the referral of your patient for a neuropsychological assessment. If I may be of further assistance in the treatment of your patient or can provide additional information, please feel free to contact me at 208-666-0357.



John A. Wolfe PhD  
Clinical Psychologist/Neuropsychologist



KAREN A. STANEK, MD, PhD

NORTHWEST MEDICAL REHABILITATION, P.S.

1315 North Division  
Spokane, WA 99202

Phone (509) 624-0908  
Fax (509) 459-0881

October 29, 2007

RE: Benjamin D. Morris  
DOB: [REDACTED]  
Claim #: 665-210231  
DOI: 10-18-06

To whom it may concern:

I am writing on behalf of my patient, Benjamin Morris. As you are aware, Mr. Morris is a 30-year-old male who sustained a closed head and whiplash injury to his neck on 10-18-06 after being struck in the back of the head with a 25-pound rock while working on the job for Norm's Utility Contractors. He was wearing a hard hat at the time of the accident, but the hat was punctured by the rock and he sustained an occipital laceration, which has resolved. He experiences residual post concussive syndrome, TMJ, neck pain, frequent headaches, cognitive deficits, anxiety, agitation, hyposomnia, and depression.

I last examined Ben on 10-12-07. I have enclosed a copy of my dictation for your review. He will require continued authorization of his medications as follows:

- ❖ Percocet 10mg up to 4x/d as needed for headache and cervical pain.
- ❖ Buspar 10 mg 3x/d for anxiety.
- ❖ Soma 350 mg 2x/day for muscle spasms. He is intolerant to Robaxin due to side effects of diarrhea and nausea. Please see dictation for details.
- ❖ Effexor XR 75 mg each morning for depression
- ❖ Abilify 15 mg each morning for agitation. This dosage may need to increase to achieve therapeutic efficacy.
- ❖ Prazosin 2 mg at bedtime to reduce frequency and severity of nightmares.
- ❖ Viagra 10 mg as needed due to decreased sexual function.
- ❖ Lorazepam 0.5 mg 3x/day for anxiety.

Ex 4

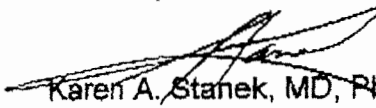
RE: Benjamin D. Morris  
DOB: [REDACTED]  
Claim #: 665-210231  
DOI: 10-18-06  
10-29-07  
Page 2 of 2

It is my opinion on a more probable than not basis that the following conditions are directly related to the head injury he suffered while on the job on October 18, 2006:

- ❖ Closed head injury
- ❖ Cervical injury – whiplash
- ❖ Cognitive deficits
- ❖ Frequent headaches
- ❖ Agitation
- ❖ Depression
- ❖ Anxiety
- ❖ Muscle spasms
- ❖ Neck pain
- ❖ Hypersensitivity to noise and light
- ❖ TMJ with jaw pain
- ❖ Post concussive syndrome
- ❖ Hyposomnia
- ❖ Sexual dysfunction
- ❖ Difficulty breathing

If you should require further information or assistance please call my office at 509-624-0908.

Sincerely,

  
Karen A. Stanek, MD, PhD  
KAS/blm



**Disability Determinations Service Division**

**Telerecorder Transcription**

Gerald Gardner, Ph.D, Licensed Psychologist  
1105 GOVERNMENT WAY  
Coeur d'Alene, ID 83814

RE: MORRIS, BENJAMIN  
SSN: [REDACTED]  
ADJ: DJB

Date of Examination: 04/22/2008  
Authorization No.:  
Date of Birth: [REDACTED]

**PSYCHOLOGICAL ASSESSMENT**

Benjamin Morris is a 31-year-old Caucasian man who was referred for psychological assessment by the State of Idaho Disability Determination Service. Alleged disabilities indicated on the authorization for service are TBI, TMJ, sleep apnea, whiplash, anxiety, and a broken nose that causes breathing problems.

Referral information includes some medical records from Karen Stanek, M.D., at Northwest Medical Rehabilitation in Spokane, Washington. He was noted to have suffered closed head and whiplash injuries in October 2006, when he was struck in the back of the head by a 25 pound rock, while working for a utility contractor. His hardhat was punctured and he suffered occipital laceration, which reportedly resolved. He was noted to have a postconcussive syndrome with TMJ, neck pain, frequent headaches, cognitive deficits, sexual dysfunction, anxiety, agitation, hypersomnia, and depression. There was some concern regarding some seizure activity. He had a video EEG in November 2007 that captured a typical staring spell, which did not show evidence of epileptic activity and was considered to be sequelae related to his postconcussive syndrome. A March 2008 note indicates that he is getting vestibular and speech therapies. He has had significant weight gain.

**PRESENTING PROBLEMS:**

Ben Morris appeared on time for his 9 a.m. appointment, accompanied by his girlfriend, Mary Edmonds. Ben presents as a husky, overweight young man who

RE: MORRIS, BENJAMIN

SSN: [REDACTED]

was casually dressed in black warmup pants and a white athletic type hooded sweatshirt. He wears a black baseball cap backward. He appears ill at ease. His brow is furrowed and he breathes rather loudly. He is polite and cooperative with the assessment, however. The girlfriend, Mary Edmonds, provides a few observations.

Asked to describe his disability, Ben indicates he has chronic headaches. His attention span is not that great. He has difficulty following instructions. He has neck pain all day from the whiplash. He reflects that he could not do the physical labor he has done in the past, nor tolerate the bouncing of the heavy equipment that he operated. He has memory problems. Mary adds that he has a lot of social anxiety since this happened. Recently, he is being evaluated for possible diabetes mellitus. His blood sugars have been up. He has had considerable weight gain on the atypical antipsychotic medication he has been given to control irritability. Today is his first day off of Abilify to gauge the affect on his blood sugars. The Abilify has been somewhat helpful for the irritability. Mary reminds him that he has physical therapy for his balance. He later mentions speech therapy. He indicates that he gets very dizzy, especially when he looks up and also when he squats or bends. The speech therapy focuses on his memory. He indicates that he is easily distracted.

Ben denies any history of psychiatric treatment. He had some neuropsychological testing done with Dr. Wolf and Dr. Hayes, perhaps last summer. He continues to see Dr. Wolfe for counseling, perhaps every other week.

His current medications are BuSpar, amitriptyline, and prazosin, for nightmares. He only recently started on the amitriptyline. He takes occasional Percocet for neck pain.

Ben denies other major physical issues. He has not had previous head injuries. He had a couple of seizure like events after the injury. He has not had any of this for some time, except for some occasional muscle spasms. He reports that he had a week-long EEG span last fall that did not find seizure activity, only some muscle spasms.

Benjamin denies history of alcohol abuse. He does not use alcohol at all now. He denies history of street drug involvement.

Ben indicates he has continued to struggle with irritability at everything. He is bothered by traffic. The mood stabilizing medications were helpful. As noted, this is his first day without a mood stabilizer. Last year was especially difficult. It

**RE: MORRIS, BENJAMIN****SSN:** [REDACTED]

was his first year living with Mary and her two teenage sons. He yelled at them a lot. He yelled at the cat. He was argumentative. He has never been physically aggressive or destructive.

Ben indicates he struggles with feelings of hopelessness and discouragement. This is strong, perhaps a bit more than half the time. He had some suicidal ideation in the past, but not recently. Mary confronted him that his father was concerned, as he had recently commented to the effect of "what's the use of it all?" He denies active suicidal ideation, however.

He continues to struggle with anxiety and some agitation. He cannot sit still or sit down for long. He paces the floor a good deal, smoking cigarettes. He feels overwhelmed. That contributes to his irritability. He denies hyperventilation. He has felt panicky at times. Mary comments that she wakes up in the morning to find him pacing. He describes himself as constantly on edge. He seems unable to relax. He feels panicky in social situations. Others can see that he is not at ease. He may need to step outside, as he did at a recent restaurant outing. He avoids people and spends most all of his time, when not at appointments, in his room. He has a blue light there, which he finds soothing. He has difficulty with photophobia. It bothers <sup>him</sup> to hear from his friends that he is "not the same person." He does not know who <sup>he</sup> is. He feels overwhelmed by too much stimulation in public places, which experiences as "chaos." He very seldom goes to public places alone. He will go to the corner store for a soda, but does not shop by himself. He usually must wear sunglasses when he is out, as he is bothered by the bright lights.

Questioned regarding intrusive recollections, he explains that he "relives the injury on a daily basis. It was very traumatic." He indicates he is amnesic only for a brief period. He has some recollection of flying through the air after the rock hitting, not knowing what had happened. He recalls coming to with his head pushed into the ground and recalls a sense that he was in great danger, as they had been using a crane to put a large pipe into a trench. He recalls recognizing that he could not move his arms effectively. He recalls "forcing" himself to move to try and evade the dangerous situation. He has nightmares in which he is "chased by stuff." He has nightmares in which family members die. His daytime distressing recollections are often specific to the accident, which he thinks of daily. He indicates that all of this "leaves me very uneasy. I'm left all day with that feeling." The thoughts of this during the day are "just overwhelming." Questioned regarding hypervigilance, he comments, "it almost feels like something is out to get me, like I'm expecting something to come up and hit me in the nose. Somebody is gunning for me." Both agree that he has exaggerated startle response. He almost flies out of bed if Mary touches him at

RE: MORRIS, BENJAMIN

SSN: [REDACTED]

night, unexpectedly. He "jumps out of my shoes" if he is startled from behind. He is very startled if a door opens quickly. He denies specific avoidance behavior, as he does not know what causes this. He is very cautious driving. He is generally avoidant, withdrawn to his room when not having appointments.

He indicates he has sleep onset difficulties. He awakens every hour or two. He has six or seven hours of broken sleep at night. He does snore and Dr. Stanek is trying to arrange a sleep study. He is sleepy at midday and falls asleep around 1 p.m. or so. He seems to sleep better for a couple of hours in the daytime, with less bad dreams. In the early afternoon, he may fall asleep watching television. He feels fatigued at other times, but does not fall asleep during other activities.

His appetite is up and down. He has gained 50 pounds since the accident, up to about 270 pounds on his 5 feet 9 inch frame. This is attributed to the sequence of medications, Risperdal, Seroquel, and Abilify.

He says he sometimes can enjoy activities, but initially cannot specify what. He used to like video games, but now finds them too hard or demanding. He finds it demanding to watch television and does not watch too much of that. He could not specify what he does enjoy. He sees his extended family on occasion. He has difficulty sitting through movies. He has pain in his neck. He has headaches. He has difficulty attending and is fidgety.

#### CURRENT ACTIVITIES:

He lives in Coeur d'Alene with Mary. They have shared an apartment for a year. She has two teenage boys with them. Neither of them have special needs. One may be a little hyperactive. He is older now, however, and that is better. They have lived together for a year. Ben had lots of clashes with the boys. He took to isolating in his room. He has a blue light there, which is easier on his eyes. He has worked on his attitude some with the boys and their relationships are better. The boys will sometimes come up to his room and hang around with him. He likes that to some degree, but also feels "invaded." He spends most of his day in his room. He comes out only for the bathroom, to eat, and to go to medical appointments. He states his room is "definitely my comfort zone."

He does fair with grooming and hygiene. He slacks off occasionally. He used to shower perhaps twice a day, before and after work. Now, he may go every other day.

Mary observes him to dress in a rather youthful style. He comments that he no

RE: MORRIS, BENJAMIN

SSN: [REDACTED]

longer wears his working clothes. He drives alright. He has driven since he was age 14. He gets aggravated at times while driving. He takes familiar routes and his medical appointments in Spokane are near the freeway. He goes there twice a week.

He rarely visits friends or has visitors anymore. He must be feeling pretty well to see anyone. He visits his parents on occasion. He sees his 3-year-old daughter on some weekends. He occasionally goes to church service, but finds that to be "too many people, so chaotic!"

His several therapies keep him rather busy during the week.

He notices definite impulsiveness in spending. He loses money or spends it. He feels this is a definite change. Mary is involved with the managing of funds. He is on a time-loss payment from Labor and Industries. Mary makes sure that she gets the money from him for the bills, first thing.

He used to snowboard as well as camp and fish. He cannot do the snowboarding physically. He seems unable to get himself organized to go camping and fishing much. He fished just a little last year.

#### ADDITIONAL HISTORY:

Ben indicates he was born in Pullman and raised by both parents. His father was disabled from a work-related injury. His mother worked as a loan officer. He indicated his father was hard on him, but that he needed it. He tended to be the class clown and would "tweak the rules." He may have been a little hyperactive, though that was not identified. He denies out-of-seat behavior. He could focus if he was interested and not rebelling. He got anywhere from B's to D's.

Ben indicates he graduated from high school. He put in a semester and a half at North Idaho College and did alright, except for math. His finances were an issue.

He started working at Landscape Construction. He worked in the irrigation. He moved into road and utility work. He operated heavy equipment. His main problem was some difficulty to work on time for the early shifts.

He has never been married. As noted, he sees his 3-year-old daughter.

#### MENTAL STATUS EXAMINATION:

RE: MORRIS, BENJAMIN

SSN: [REDACTED]

He is a husky and overweight young man. He sports some facial hair on his chin. He wears clean warmup type clothing. Grooming and hygiene appear adequate. He is accompanied by his girlfriends, Mary. He appears very ill at ease. He breathes loudly. He is mildly fidgety. Late in the interview, he sat back for a time in his seat. He commented that is rare, even at home, if he is around anyone, he tends to be sitting on the edge of the seat.

His speech is clear and grossly organized. His speech is a bit halting. He seems very tense and his breathing is loud and he tends to catch his breath.

Despite his apparent subject discomfort, he is polite and cooperative with the assessment.

Thought processes are organized. He indicates he had a few clear, brief auditory hallucinations when taking Ambien. These occurred mostly at night, but a few in the morning. He would hear something said to him briefly, but very clearly. He has not had that since off the Ambien. He does describe depressive thought content. He describes a sense of loss of identity. He denies active suicidal ideation, but has recently voiced strong discouragement about his situation. He describes some apparent intrusive recollections about the accident and some apprehension or hypervigilance.

He is grossly oriented x3. He gives the month, date, and year correctly. He does not follow the news and could not spontaneously relate any stories. He can name the president, but not the vice president. He is able to name Afghanistan and Iran as places the United States is fighting wars.

Asked to name five of the largest cities in the United States he names Los Angeles, New York, Chicago, and Seattle. He stops at that point.

He gives a pretty good abstract interpretation of the hot iron proverb; "do something while it's a good opportunity to do something." He gives a full credit response for the smoke from the neighbor's window dilemma.

He struggles with subtracting serial threes as follows: "20, 17, 15, sighs, 13, oh! 13, 9, 6, 3." He is able to spell the word *world* forward, but backwards spells it *dlrow*.

He is able to add  $5 + 6 = 11$ , but incorrectly multiplies  $5 \times 6$  to be 64. He then changes his answer to 35, still incorrect. He calculates change for three 15-cent items from a dollar to be 65-cents.

RE: MORRIS, BENJAMIN

SSN: [REDACTED]

He is able to recall five digits forward with an error on the first trial of five forward. He recalls only three backward. This is a weak performance. He recalls three of three unrelated objects immediately, but none of three after a five-minute delay. He recognizes two of the words and spontaneously recalls the third at that point.

**SUMMARY IMPRESSIONS:**

I did not have impression of malingering or embellishment.

Diagnostic impressions are as follow:

- AXIS I:**
- A. Cognitive disorder associated with general medical condition (traumatic brain injury)
  - B. Personality change associated with traumatic brain injury.
  - C. Mood disorder NOS. He appears to have some reactive depression due to the changes in his life. There is some indication of behavioral and emotional disinhibition, primarily irritability.
  - D. Anxiety disorder NOS. He appears to have significant features of post-traumatic stress disorder as well as social anxiety. He may actually meet criteria for more than one anxiety syndrome.
- AXIS II:** Probably some cluster-B personality traits, premorbidly. I see there is a mention in the records that he had a no-contact order against him prior to the accident. I failed to follow up that issue in the interview.
- AXIS III:** He is status-post traumatic brain injury. He has a neck injury with chronic pain. He reports some back problems. There is concern for an obstructive sleep disorder and the possible diabetes mellitus. He has had considerable weight gain on mood stabilizing medications.
- AXIS IV:** Psychosocial stressors are severe, primarily his diminished capacities and tolerances and restricted activity secondary to the effects of his injuries.
- AXIS V:** GAF is estimated to be high 40s.

As to functional activities, memory testing was not tested in detail. It appears he

DMA

RE: MORRIS, BENJAMIN

SSN: [REDACTED]

has had some neuropsychological testing last year. He does report difficulties with memory and daily life and did poorly on mental status screening for short-term memory. He would appear to have some impairment of memory for instructions and procedures.

He does rather poorly on mental control tasks. He is able to drive. He apparently follows through poorly on and does very little in the way of chores at home, according to his girlfriend. He is not doing any repairs or yard work. He finds the outdoors too bright for yard work. He has significant anxiety symptoms and social avoidance. I doubt he would be able to sustain a full work schedule under ordinary stressors or with ordinary contacts with others.


Socially, he is quite withdrawn. He is able to carry out some superficial interactions in the course of getting his therapies and the like. He has struggled with irritability. He benefitted from mood stabilizing medications, but was taken off of those as of today because of health concerns.

He does not appear to have gross impairment of reality testing. He does describe some possible deficits in executive functioning, which can be associated with whiplash type injuries. He describes difficulty initiating, organizing, and persisting in activities. He is overwhelmed by stimulation.

As he is approximately one and one-half years post injury, it appears that many of his current deficits will persist. It is unclear to what extent he might benefit from intensive and highly supportive treatment of his anxiety condition.

He appears unable to manage funds reliably.

Please call if I can be of further assistance.

  
Gerald Gardner, Ph.D. Licensed Psychologist

Transcriptionist: CYM, Transcription Job Identification: 555442

Dictation Date: 04/22/2008

Transcription Date: 04/23/2008

Adjudicator Initials: DJB



FROM

(MON) JUL 14 2008 9:21/ST. 9:16/No. 6820018575 P 2



**NW Medical Rehabilitation**  
1315 N. Division  
Spokane, WA 99202  
Phone: 509-624-0908 Fax: 509-459-0881

07/06/2008

RE: Benjamin D Morris  
DOB: [REDACTED]

Liberty NW  
Julie Osler, Claims Manager  
Fax: 1-800-256-3856

Dear Ms. Osler;

I am writing on behalf of my patient, Benjamin Morris, to update you on his progress and my recommendations for further treatment.

He was last evaluated in my office on 07-03-08. I have enclosed my office note for your review. His recovery has been very slow. He feels he has only returned to 50-60% of his baseline. His deficits include hypsomnia, which impacts all aspects of his life including his health, as well as memory impairment and headaches/neck pain, all which have inhibited his return to work.

It has been approximately 18 months since his injury. Usually the majority of the recovery occurs within the first two years. He responded well to trigger point injections in the past with temporary muscle spasm and pain reduction. Unfortunately, the benefits are very short term and would need to be repeated every few days to remain effective, which would be very expensive and not cost effective. I am requesting a trial of Botulinum Toxin injections, which will provide pain and muscle spasm reduction for three months. He would benefit from further physical therapy in conjunction with this treatment to improve core stabilization, movement, and also facilitate pain reduction with emphasis on a home exercise program.

Ben continues to be plagued with poor memory, which would inhibit his success in sustaining viable employment. Instead of cognitive therapy, which he has received in the past, he may benefit from a new memory clinic in Coeur d'Alene affiliated with the Dirney Clinic, to work exclusively on memory compensation for a few weeks.

Recommendations for treatment:

1. Trial of Botulinum Toxin injections for long term spasticity management. One to two treatments.
2. 6-8 sessions of physical therapy to include core stabilization, myofascial manipulation, and patient education regarding home exercise program.
3. Referral to Dirney Clinic for their memory clinic to continue therapy to aid with memory compensation to facilitate success with employment. 12 sessions over 10-12 weeks.
4. Initiate vocational rehabilitation once therapy has been completed which I anticipate should occur within the next three months. I feel he will be able to return to some type of viable employment suitable to

Ex 6

65

FROM

(MON) JUL 14 2008 9:11:31 9:16/No. 6820018575 P 3

Page 2 of 2 Name: Benjamin D Morris DOB: [REDACTED] Date: 07/06/2008

his limitations. If suitable employment is not determined, recommend  
for pension and closure of his claim.

Should you require further information please contact my office at 509-  
624-0900 for additional assistance.

Sincerely,

  
Karen A. Stanek MD

KAS/blm

**Delay, Curran, Thompson, Pontarolo & Walker, P.S.**

*Attorneys at Law*

601 West Main, Suite 1212 • Spokane, WA 99201-0684

Phone (509) 455-9500, Toll-Free Number 1-800-572-0933

**Fax (509) 623-1446**

Smith Tower • 506 2nd Ave., 25th Floor • Seattle, WA 98104

Phone (206) 343-8535

**All Correspondence to Spokane Office**

JOSEPH P. DELAY

J. DONALD CURRAN

ROBERT H. THOMPSON

MICHAEL J. PONTAROLO

MICHAEL J. WALKER\*\*

• CLARENCE A. BOLING (1928-1977)

\*\*Admitted in Washington & Idaho

July 31, 2009

Ben Morris  
550 Hydra Place, Unit A  
Post Falls, ID 83854

Re: Idaho Industrial Insurance Claim

Dear Mr. Morris:

Upon review of your file, I note we have deferred \$2,190.00 in fees to date, as you can see by the attached ledger. Unfortunately, I cannot continue to do so from a business standpoint.

Commencing with your August PPI payment, I will need to start taking fees from PPI checks of 25%, based upon our fee agreement. I will recover the deferred amount of \$2,190.00 from the final resolution of your claim.

Sincerely,



MICHAEL J. WALKER

MJW:je

Enclosure: Attorney fee ledger

Ex 7

**ATTORNEY'S FEES LEDGER  
FEE'S DEFERRED TO DATE**

RE: Benjamin Morris  
I.C. NO.: 06-525142

---

\*PPI\*

Date:                      Amt. Received:      Fee's deducted:      Fee's deferred:      Total Amt owed  
(Deferred to date):

12/12/08	\$1,035.32	\$0	\$310.00	\$310.00
01/12/09	\$1,035.32	\$0	\$310.00	\$620.00
02/17/09	\$873.32	\$0	\$310.00	\$930.00
03/02/09	\$873.32	\$100.00	\$210.00	\$1,140.00
04/01/09	\$873.32	\$100.00	\$210.00	\$1,350.00
4/27/09	\$873.32	\$100.00	\$210.00	\$1,560.00
5/26/09	\$873.32	\$100.00	\$210.00	\$1,770.00
6/23/09	\$950.40	\$100.00	\$210.00	\$1,980.00
7/21/09	\$950.40	\$100.00	\$210.00	\$2,190.00
<b>MJW to deduct 25% fee's from August 2009 PPI check forward</b>				

**\*\*Fee's are deducted from Gross amount of PPI check.**

**Social Security Administration**  
**Retirement, Survivors and Disability Insurance**  
Important Information

Office of Central Operations  
1500 Woodlawn Drive  
Baltimore, Maryland 21241-1500  
Date: November 9, 2009  
Claim Number: 531-78-5069HA

000059485 02 MB 0.507 T247 T2R M04,1102,PC7,I,BA,153

HAROLD MORRIS FOR  
BENJAMIN D MORRIS  
12930 REEVA RD  
COEUR D ALENE ID 83814-9587



We are writing to tell you that BENJAMIN MORRIS will start getting benefits beginning November 2009. We told him earlier that when we started paying him benefits, we would adjust them for medical insurance premiums.

We changed BENJAMIN MORRIS' monthly Social Security benefit to \$803.40 beginning October 2009 because his benefits are not affected by his receipt of workers' compensation and/or public disability payments.

**What We Will Pay And When**

BENJAMIN MORRIS' obligation to pay child support and/or alimony has been deducted from the amount(s) shown under the heading "What We Will Pay And When".

- He will receive \$298.30 around December 3, 2009. This is the money, after all deductions, he is due for November 2009.
- We withheld \$96.40 for medical insurance premiums from this payment.

We withheld \$298.30 from this payment to pay his obligation for child support and/or alimony.

- After that you will receive \$353.50 on or about the third of each month.

We will withhold \$353.50 from his benefit each month to pay his obligation for child support and/or alimony.

**Information About Medicare**

Since benefits are again payable we will resume withholding BENJAMIN MORRIS' medical premiums due to date.

Any additional premiums due will be deducted from his check.

Enclosure(s):  
Pub 05-10153

**What You Need To Do**

To make sure you get the correct amount of benefits, you need to report promptly any changes in the amount you earn or expect to earn. You should also report any other changes that may affect your payment.

The pamphlet "What You Need To Know When You Get Social Security Disability Benefits" describes the events you need to report. If you no longer have the pamphlet, you can get one from any Social Security office, or the nearest United States Embassy or Consulate.

**If You Disagree With The Court Order**

The appeal rights discussed below do not apply to the court ordered child support and/or alimony. If you disagree with the court order, you will need to contact the court directly, or have a lawyer do it for you.

**If You Disagree With The Decision**

If you disagree with this decision, you have the right to appeal. We will review your case and consider any new facts you have. A person who did not make the first decision will decide BENJAMIN MORRIS' case. We will correct any mistakes. We will review those parts of the decision which you believe are wrong and will look at any new facts you have. We may also review those parts which you believe are correct and may make them unfavorable or less favorable to him.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- You have to ask for an appeal in writing. We will ask you to sign a Form SSA-561-U2, called "Request for Reconsideration". Contact one of our offices if you want help.

**If You Have Any Questions**

We invite you to visit our website at [www.socialsecurity.gov](http://www.socialsecurity.gov) on the Internet to find general information about Social Security. If you have any specific questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-866-931-9036. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY  
623 EAST WALLACE AVE  
COEUR D ALENE, ID 83814



**Social Security Administration**  
**Retirement, Survivors and Disability Insurance**  
Important Information

Office of Central Operations  
1500 Woodlawn Drive  
Baltimore, Maryland 21241-1500  
Date: February 9, 2010  
Claim Number: 531-78-5069HA



000051603 01 MB 0.382 T206 T2R M04,0202,PC7,N,BA,  
HAROLD MORRIS FOR  
BENJAMIN D MORRIS  
12930 REEVA RD  
COEUR D ALENE ID 83814-9587



There has been a change in the amount deducted from BENJAMIN MORRIS' monthly payment to pay his obligation for child support and/or alimony.

**What We Will Pay And When**

- You will receive \$511.00 for February 2010 around March 3, 2010.

We withheld \$292.00 from this payment to pay his obligation for child support and/or alimony.

- After that you will receive \$511.00 on or about the third of each month.

We will withhold \$292.00 from his benefit each month to pay his obligation for child support and/or alimony.

**If You Have Any Questions**

We invite you to visit our website at [www.socialsecurity.gov](http://www.socialsecurity.gov) on the Internet to find general information about Social Security. If you have any specific questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-866-931-9036. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY  
623 EAST WALLACE AVE  
COEUR D ALENE, ID 83814

**Social Security Administration**  
**Retirement, Survivors and Disability Insurance**  
Important Information

Office of Central Operations  
1500 Woodlawn Drive  
Baltimore, Maryland 21241-1500  
Date: November 11, 2009  
Claim Number: 531-78-5069A

000002392 01 MB 0.382 T005,GAR,1104,PC7,BA



HAROLD MORRIS FOR  
BENJAMIN D MORRIS  
12930 REEVA RD  
COEUR D ALENE ID 83814-9587

|||||



We are writing to you about court order number 231905 concerning BENJAMIN MORRIS' responsibility for child support and/or alimony.

**What We Plan To Do**

We have been ordered to take \$370.50 from each monthly payment BENJAMIN MORRIS is due to pay his obligation for child support and/or alimony. We withheld \$370.50 from the payment BENJAMIN MORRIS will receive around December 3, 2009. After that we will withhold \$370.50 each month. You will receive another letter showing the payment amount BENJAMIN MORRIS will receive.

**If You Disagree With The Decision**

If you disagree with the decision of the court that issued the garnishment order, BENJAMIN MORRIS will need to contact them directly or have a lawyer do it for him.

Carolyn L. Simmons  
Associate Commissioner for  
Central Operations



# Social Security Administration Representative Payee Report

BM

## Why You Received This Form

We must regularly review how representative payees used the benefits they received on behalf of the Social Security and/or Supplemental Security Income (SSI) beneficiaries. We do this to ensure the benefits are used properly. When you were appointed representative payee, you were informed of the duties and responsibilities of a representative payee, including keeping records and reporting on the use of benefits.

## What You Need To Do

You must report to SSA on your use of benefits if you received any Social Security and/or SSI payments during the 12 month period shown on the enclosed form. You must do this if you wish to continue receiving benefits on behalf of another person. You should use the records you have saved to answer the questions on the enclosed form.

**You may submit this form online via [www.socialsecurity.gov/payee](http://www.socialsecurity.gov/payee). Please follow the instructions for Internet Payee Accounting Report. If you complete the form online, you will be able to print a receipt and a copy of your report. If you report online, you should have all your records and the enclosed form handy to help you answer the questions. You should not send in a paper form if you complete the online version.**

Any records you have saved such as bank statements, cancelled checks, receipts for rent, etc., should be kept for two years from the time you file your report with SSA. You should not send in any of these records with your report form. If we have any questions or require proof, we will contact you.

## General Instructions If You Complete and Return The Enclosed Form

Please read these instructions before you complete the enclosed report form or submit your report online. You should either complete and return the report form, or submit the online report, within 30 days.

To help us process your report, please follow these instructions:

1. Use black ink.
2. Keep your numbers and "X's" inside the boxes.
3. Do not use dollar signs.
4. Show money amounts in dollars only. Do not show cents.  
For example, show \$1,540.70 like this:

**DOLLAR AMOUNT**

		1	5	4	0
--	--	---	---	---	---

5. Use the REMARKS section on the back of the form to provide additional information as requested.
6. Review the payee mailing address and correct if necessary. If you change the payee mailing address to a P.O. Box, show the payee's actual physical address in REMARKS.
7. **Be sure you, the representative payee, sign the form.**

Ex 9

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## Some Definitions To Help You

**Benefits** – The Social Security and/or SSI money that you receive.

**Payee** – You. The person (or organization) who receives Social Security and/or SSI benefits for someone else.

**Beneficiary** – The person for whom you receive Social Security and/or SSI benefits.

**Legal Guardian** – The person or organization appointed by a State court to manage the affairs of a beneficiary.

**Report Period** – The 12-month period shown on the report for which you must account for the benefits you received.

**Total Accountable Amount** – The amount of benefits paid to you during the report period **plus** any amount you reported as saved on last year's report.

---

## HOW TO FILL OUT THE FORM

---

### QUESTION 1 – Payee Felony Convictions

Place an "X" in the "YES" box if during the report period, you (the payee) were convicted of a crime considered to be a felony and explain the type of crime under REMARKS. Otherwise, place an "X" in the "NO" box.

---

### QUESTION 2 – Beneficiary Custody Changes

Place an "X" in the "YES" box if the beneficiary continued to live alone, or with the same person, or in the same institution during the entire report period. Place an "X" in the "NO" box if different people or different institutions took care of the beneficiary during any part of the report period. Explain the change and provide the beneficiary's current address under REMARKS.

---

### QUESTION 3 – Accounting For Benefits

The total accountable amount includes the benefits you received during the report period **plus** any benefits you reported as saved on last year's report.

#### A. Who Decided How Benefits Were Used?

Place an "X" in the "YES" box if **you** (the payee) decided how the benefits were to be spent or saved. Place an "X" in the "NO" box if the beneficiary or someone else decided how to use the money, and explain under REMARKS.

#### B. Food and Housing

Show the total amount of benefits spent for food and housing for the beneficiary during the report period. If the beneficiary lives in an institution or nursing home and you pay monthly charges, multiply the monthly charge by 12 and show this total amount.

#### C. Personal Items

Show the total amount of benefits spent on clothing, medical/dental care, education, and recreational items like toys, movies, cameras, radios, candy, stationary, grooming aids, etc. during the report period.  
**Note:** If the beneficiary lives in an institution or other care facility, you should spend at least \$360 a year for the beneficiary's personal needs. If you spent less than \$360, explain under REMARKS.

---

**D. Unused Benefits**

Show the total amount of benefits you have saved for the beneficiary at the end of the report period, including any interest earned. Show zeroes if you did not save any of the benefits.

**NOTE**

For Social Security beneficiaries who are residing in an institution, use REMARKS to provide the amount of benefits, if any, the state Medicaid agency has determined are for the use of the community spouse and other dependents, if applicable.

---

**QUESTION 4 – Savings Information**

Answer this question if you showed an amount in 3.D.

**A. Type Of Account**

Place an “X” in the box which shows how you are saving the benefits. Place an “X” in the “Other” box if your method of saving the benefits is not listed.

**B. Account Title**

Place an “X” in the box which most accurately describes the wording of the account title you have on the beneficiary’s savings. Place an “X” in the “Other” box if the account title is different **or** if you have not placed the savings in any type of account. **Note:** A savings or checking account title should always show that the money belongs to the beneficiary, but the beneficiary should not have direct access to the funds.

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**QUESTION 5 – Other Savings/ Account Titles**

Answer this question only if you checked “OTHER” in 4.A. or 4.B.

**A. Type Of Account**

Indicate whether the saved benefits are in cash, Treasury Bills, or some other investment such as mutual funds. For mutual funds, be sure to show the name of the fund in your response (e.g., “XYZ Growth” mutual fund).

**B. Title Of Account**

Show the title of the account if the savings are in an account or other investment. Show “none” if the savings are not in an account or investment.

---

**6. Payee’s Signature**

**Sign your name in this block.** If you sign by mark (“X”), please have two witnesses sign their names and show the date. If the payee is an institution or agency, the form must be signed by an authorized person.

## Your Responsibilities As Representative Payee

We appreciate your services as representative payee. As payee, you must use the Social Security and/or SSI benefits you receive for the care and well being of the beneficiary. You need to know the beneficiary's needs so that you can use the money properly.

In addition to reporting on the use of benefits, you must report any changes which may affect the beneficiary's eligibility for benefits, or the payment amount. You should report the changes as soon as possible by calling SSA at 1-800-772-1213, or by calling or writing your local SSA office. For example, you must tell us if the beneficiary:

- dies,
- moves (especially if he/she enters or leaves a hospital or other institution),
- marries,
- starts or stops working,
- is imprisoned,
- is adopted,
- no longer needs a payee, or
- you are no longer responsible for the beneficiary.

If you are payee for a child receiving SSI benefits, we may ask you for proof that the child is receiving medical treatment for his/her disabling condition. We may ask for this information at the time we review the child's case. If we do ask for this information, you must give it to us.

If you are no longer payee for the beneficiary, you must return any Social Security funds you have saved to SSA.

## The Privacy Act And Paperwork Reduction Act Statements

We are required by sections 205(j) and 1631(a) of the Social Security Act to ask you to complete this report. The information you provide enables SSA to account for the beneficiary's payments, and ensures that beneficiary needs are being met. If you do not complete and return this report, we may not be able to continue sending the beneficiary's payments to you.

The law sometimes requires us to give out the facts on this form without your consent. The information must be released to another person or government agency if Federal law requires the information for research and audits in order to administer or improve our representative payee program.

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it. Explanations about these and other reasons why information you provide us may be used or given out are available in Social Security offices. If you want to learn more about this, contact any Social Security office.

This information collection meets the requirements of 44 U.S.C. §3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 15 minutes to read the instructions, gather the necessary facts, and answer the questions. *You may send comments on our time estimate above to: SSA, 1338 Annex Building, Baltimore, MD 21235. **Send only comments relating to our time estimate to this address, not the completed form.***

## If You Have Any Questions

If you have any questions, please call us at 1-800-772-1213. We can answer most questions over the phone. If you prefer to visit one of our offices, please use the 800 number and we will give you the address and telephone number of the office nearest you. Please take this report with you if you visit an office. You may also visit our website at [www.socialsecurity.gov](http://www.socialsecurity.gov).

*WORKER'S COMPENSATION FEE AGREEMENT*

Client: Benjamin D. Morris

Date Injured: 10-18-2006

Claim No: 2006525142

Attorney: Michael J. Walker

Attorney Address: Delay, Curran, Thompson, Pontarolo & Walker, P.S.  
601 W. Main Ave., Suite 1212  
Spokane, WA 99201  
(509) 455-9500

I hereby employ attorneys DELAY, CURRAN, THOMPSON, PONTAROLO & WALKER, P.S., to represent me in the above case for a fee of thirty percent (30%) percent of the benefits the attorneys obtain for me from available funds if this matter goes to hearing. If through the attorney's efforts benefits are secured prior to the matter going to hearing, the attorney fees shall be reduced to twenty-five percent (25%) of the benefits the attorneys obtain for me from available funds. Available funds are any compensation benefits under the worker's compensation laws, including but not limited to time loss compensation (total temporary disability), permanent partial impairment, pension payments following a total permanent disability determination, and medical treatment either past or future. In the event of total permanent disability, attorney fees shall be reduced to fifteen (15%) percent of such disability compensation after ten (10) years from such total permanent disability payments commence. If no recovery is obtained for the claimant for any reason, the attorneys shall receive no fee or compensation, but the client shall remain responsible for reimbursing the attorneys for the actual cash advanced for preparation of the case.

Disclosure Statement

1. In workers' compensation matters, attorney's fees normally do not exceed 25% of the benefits your attorney obtains for you in a case in which no hearing on the merits has been completed. In a case in which a hearing on the merits has been completed, attorney's fees normally do not exceed 30% of the benefits your attorney obtains for you.
2. Depending upon the circumstances of your case, you and your attorney may agree to a higher or lower percentage which would be subject to Commission approval. Further, if you and your attorney have a dispute regarding attorney fees, either of you may petition the commission to resolve the dispute.

I certify that I have read and understand this Disclosure Statement, that I agree to be bound by the terms of this Fee Agreement, and that I have been provided a copy of this document.

Client's Signature: Ben Morgan Date: 3-13-08  
Attorney's Signature: Michael Date: 3-13-08

Kent W. Day, ISB 4273  
LAW OFFICES OF HARMON, WHITTIER & DAY  
6213 N. Cloverdale Rd., Ste. 150  
P.O. Box 6358  
Boise, ID 83707-6358  
Telephone (208) 327-7566  
FAX (800) 972-3213  
*Employees of the Liberty Mutual Group*

COPY RECEIVED  
JAN 22 2010  
DELAY, CURRAN, THOMPSON,  
PONTAROLO & WALKER P.S.

Attorney for Defendants

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF IDAHO

Benjamin Morris,

Claimant,

vs.

Hap Taylor & Sons, Inc.,

Employer,

and

Liberty Insurance Corp.,

Surety,

Defendants.

I. C. No.: 2006-525142

STIPULATION AND AGREEMENT  
OF PARTIAL LUMP SUM  
DISCHARGE AND  
ORDER OF APPROVAL AND  
PARTIAL DISCHARGE

In consideration of the premises and promises and covenants hereinafter set forth, and subject to the above-entitled Commission's approval and Order of Discharge pursuant thereto, and further pursuant to Idaho Code §§ 72-707 and 72-404, the above-entitled parties hereby stipulate and agree in favor of the Claimant, Benjamin Morris, as hereinafter set forth.

I.

It is agreed that on or about October 18, 2006, the Claimant, Benjamin Morris, was employed by Hap Taylor & Sons, Inc., in the County of Kootenai Idaho, and on the same date the Claimant allegedly sustained an injury as a result of an industrial accident arising out of and during the course of employment which he then had with the Defendant, Hap Taylor & Sons, Inc. These injuries include, but are not necessarily limited to, closed head injury, including a cervical strain, chronic neck pain, anxiety, PTSD, depression, headaches, photophobia, vertigo, dizziness, chronic jaw pain, and TMJ.

All damages, disability, loss, expense and injury, past, present and future, in any way resulting from or related to the alleged accident are finally settled and discharged by this Agreement except that Defendants agree to medical benefits and time loss benefits relating to any future medical treatment that is causally related to the October 18, 2006 injury. The parties agree that no additional permanent partial impairment and/or disability benefits will be paid after approval of this lump sum agreement. This is the case whether or not these damages, disability, loss or expense are now known, recognized or foreseen.

II.

At all times herein mentioned, Liberty Insurance Corp. was the Surety of said Employer under the Workers' Compensation Laws of the State of Idaho.

III.

Claimant contends, and Defendants deny, that the Defendants are liable for all of the medical expenses and compensation pursuant to the Workers' Compensation Laws of the State of Idaho as a result of injury sustained from said alleged industrial accident. It is Defendants' contention that disputes exist in this claim concerning the nature and extent of



injuries, the cause and extent of Claimant's permanent impairment and disability, entitlement to temporary partial and total disability benefits and probable amount of future medical expenses. The parties hereto acknowledge that these are serious questions and disputes, and that all differences are compromised and settled by this Agreement with the exception of future medical treatment required for injuries sustained in the October 18, 2006 incident and any TTD and/or TPD benefits that Claimant may be entitled to as a result of the causally related future medical treatment.

In consideration of this Agreement, all parties stipulate that the Commission shall, on and by approval hereof, be deemed to adjudicate these issues and all other issues arising out of Claimant's alleged accident and injuries, as provided by the Workers' Compensation Laws of the State of Idaho.

IV.

At the time of the alleged accident herein referred to, the Claimant was single with 2 dependent(s), and was receiving an average weekly wage of \$762.73.

V.

It is agreed and stipulated that on or about 10/18/2006, the Claimant filed a Notice of Injury and Claim for Compensation with respect to the aforementioned claims with the Industrial Commission of the State of Idaho. It is further agreed that Defendants have paid Claimant's medical expenses to date in the sum of \$65,386.25. In addition, Defendants agree to pay future medical expenses that are causally related to treatment of injuries arising out of the October 18, 2006 injury.

The following medical and related expenses have been incurred by Claimant following said accident to the present date, none of which have been paid by Defendants and all of which will be paid by Claimant from the proceeds of this lump sum settlement:

Claimant represents that the above itemization of unpaid medical bills is complete and accurate, and agrees to pay any medical billing, whether indicated above or not, that remains unpaid as of the date of this Agreement.

VI.

By way of settlement of these disputes, the parties agree to the following:

1. Medical expenses paid by Surety:

Physicians:

Alpine Chiropractic Center  
John A. Wolfe  
Kootenai Medical Center  
Mountain States Counseling  
N. David Crow DDS  
North Idaho Family Physicians  
North Idaho Imaging Center  
North Idaho MRI  
Northwest Medical Rehab  
R. Clint Horan, M.D.  
Radiology Assoc. of N. Idaho  
Rockwood Clinic  
St. Josephs ENT  
Thomas P. Beaton, MD  
Boise Physical Medicine & Rehab

Total: \$ 17,605.44

Hospitals:

Kootenai Medical Center

82

Total: \$ 16,955.95

Physical Therapists:

Alpine Chiropractic Center  
Ironwood Drive PT  
St. Luke's Rehab  
St. Alphonsus

Total: \$ 12,030.46

Travel/Mileage:

Boise City Taxi  
Benjamin Morris

Total: \$ 2,149.63

Miscellaneous:

Progressive Medical  
Restat  
Walgreen

Total: \$ 16,644.77

TOTAL MEDICAL PAID: \$ 65,386.25

2. Total Temporary Disability  
Owed by Surety:

<sup>12</sup>  
10/04/06 – 12/31/06  
or 4 weeks @ \$508.50  
per week = \$ 2,034.00

01/01 – 12/02/07  
48 weeks @ \$511.03  
per week = \$ 24,529.44

12/03/07 – 12/31/07  
4 weeks, 1 day @ \$391.28  
per week = \$ 1,621.02

01-08-08 - 12/01/08  
 47 ~~48~~ weeks @ \$414.06 <sup>19,460.82</sup>  
 per week = \$ ~~19,874.88~~ <sup>OR</sup>  
TOTAL TTD OWED: \$ ~~48,059.34~~ <sup>47,645.28</sup> <sup>OR</sup>

3. Permanent Partial Impairment:

Dr. Lyons and Dr. Beaver assessed a 10% WP

50 weeks @ \$310.75 per week

TOTAL PPI OWED: \$ 15,537.50

4. Consideration of lump sum settlement;  
 disputed PPI/PPD/PTD benefits of any  
 kind, accrued and future; waiver of  
 right to reconsideration and to appeal \$ 54,381.00

**TOTAL:** \$117,977.84

<sup>OR \$414.06</sup>  
 LESS TTD PAID: ~~OVERPAYMENT WAIVED~~ (\$ 48,059.34)  
 LESS PPI PAID: (\$ 15,537.50)

**TOTAL DUE CLAIMANT:** \$ 54,381.00\*  
**\*MINUS CHILD SUPPORT** \$ 7,734.97  
**TOTAL DUE CLAIMANT** \$ 46,646.03

a) Attorney fees taken prior to LSS: \$ 1,680.00  
 b) Costs taken prior to LSS: \$ -0-  
 c) Additional attorney fees to be taken  
 from LSS: \$ 13,595.00  
 d) Additional costs to be taken from LSS: \$ 1,428.00  
**SUBTOTAL (ADD c + d)** \$ 15,023.00  
**Total Claimant's Fees and Costs:** \$ 15,023.00

Itemized list of outstanding medicals  
 to be paid by Claimant from LSS  
 balance: \$ -0-  
**TOTAL TO CLAIMANT:** \$ 31,623.03

VII.

All parties acknowledge that the nature and extent of temporary and permanent disability, if any, are uncertain and in dispute; that pursuant to I.C. § 72-404, it is in the best interest of the parties that the above-entitled claims be fully, finally and forever discharged upon a lump sum payment by Surety in the amount of \$54,381.00 minus child support as indicated below. Such settlement to discharge all rights and claims to all permanent and temporary compensation, except for reasonable and necessary medical benefits causally related to the October 18, 2006 injury and time loss benefits associated therewith.

The lump sum amount stated below, as well as any permanent impairment paid prior to settlement herein, shall be apportioned as follows:

The amount of monies paid herein is to accrue to the benefit of the claimant and is being paid in consideration of settlement of all indemnity claims for compensation against the employer and surety, under the workers' compensation laws for the State of Idaho and not for future claims for medical. The lump sum is compensation for permanent impairment and permanent lifetime disability attributable to the employer and surety and shall be prorated over the lifetime of the claimant. Claimant's life expectancy tables, and the lump sum paid by the employer and surety shall be treated as if paid at a weekly rate of \$15.73 per week, commencing on the 15<sup>th</sup> day of January 2010.

The parties further acknowledge that the State of Idaho, Idaho Child Support Services, issued an Order/Notice to Withhold Income for Child Support with respect to Claimant. As indicated in the order attached hereto as Exhibit "A," Defendants are required to forward to Idaho Child Support Services the amount of \$7,734.97.

69.22

VIII.

All parties acknowledge that the nature and extent of temporary and permanent disability, if any, and the amount of medical and related care and expense in this matter are uncertain and in dispute; that it is in the best interest of justice that the above-entitled indemnity claims be fully, finally and forever discharged upon a lump sum payment by Surety on behalf of Claimant in the amount of \$7,734.97 payable to the State of Idaho Child Support Services representing payment on the Child Support Lien for Idaho and the balance of \$46,646.03 to the Claimant and his attorney. Claimant agrees to pay and/or discharge the attorney fee lien of James Hannon, who previously represented him in this matter, out said balance paid to Claimant and his attorney. Such settlement to discharge all rights and claims to all permanent and temporary compensation, excepting future medical benefits whether or not known, herein listed, discoverable or contemplated by the parties.

Claimant does indemnify and agree to save Defendants harmless from and against any further claim or loss of any and every kind arising out of or related to said alleged accident and any resultant loss, damage or injury, excluding any claim respecting casually related hospital, medical or like expense to include associated temporary time loss.

IX.

In making this Stipulation and Agreement of Partial Lump Sum Settlement, all parties acknowledge and agree that neither Defendant admits the allegations of Claimant, this Agreement being solely for the purpose of adjudication and settlement of doubtful and disputed claims.

X.

This Agreement is made at Claimant's request and is the acceptance by the Claimant of the offer of the Surety. By this instrument, Claimant requests settlement be made in accordance with the terms and conditions of this Agreement, and further petitions the Commission for approval hereof and Order of Partial Discharge pursuant hereto. Employer and Surety herein join in said petition and stipulate that it shall be granted.

XI.

Claimant acknowledges that he has carefully read this Agreement and legal instrument in its entirety, understands its contents, and has executed the same knowing that this Agreement forever concludes and fully and finally disposes of any and all claims for indemnity benefits he has or may have against the Employer and Surety on account of the alleged accident and injury on October 18, 2006.

IT IS FURTHER STIPULATED AND AGREED that the Defendants shall pay the sum within fifteen days following their receipt of the approved and conformed copy of this entire agreement. Any interest allowable under the Workmen's Compensation Laws of the State of Idaho will not begin to accrue until after the fifteen-day period.

Claimant further acknowledges that he is represented by Michael J. Walker, legal counsel, in these claims and has reviewed the contents of the Agreement with his attorney, who has explained the contents hereof and apprised Claimant of the consequences of his acceptance and execution.

IT IS UNDERSTOOD THAT IN EXECUTING THIS AGREEMENT THESE PROCEEDINGS ARE CONCLUDED AND FOREVER CLOSED BY REASON THEREOF, SUBJECT ONLY TO COMMISSION APPROVAL AND ORDER, AND THAT CLAIMANT

WILL NOT THEREAFTER BE ABLE TO REOPEN THE SAME FOR ANY PURPOSE  
EXCEPT THAT DEFEDANT'S AGREE TO CONTINUE TO PAY MEDICAL BENEFITS  
AND TIME LOSS BENEFITS RELATING TO ANY FUTURE MEDICAL NEED THAT THE  
PARTIES AGREE IS CAUSALLY RELATED TO THE OCTOBER 18, 2006 INJURY OR  
WHICH IN THE EVENT OF DISAGREEMNT IS FOUND BY THE COMMISSION TO BE  
CASUSALLY RELATED TO THAT INJURY. Notwithstanding this knowledge, Claimant  
and Defendants hereby petition the Industrial Commission for a lump sum settlement as  
evidenced by these presents.

////

////

////



DATED this 4<sup>th</sup> January, 2010  
~~day of December, 2009~~

Ben Morris  
Benjamin Morris, Claimant

APPROVED:

By Michael J. Walker  
Michael J. Walker  
Attorney for Claimant

LAW OFFICES OF HARMON, WHITTIER & DAY

Kent W. Day  
Kent W. Day  
Attorney for Defendants

Berni Seever  
Berni Seever  
Liberty Northwest Ins. Corp.

ORDER OF APPROVAL AND OF PARTIAL DISCHARGE  
UPON LUMP SUM PAYMENT

The foregoing stipulation, agreement and petition having duly and regularly come before this Commission and that pursuant to I.C. § 72-404, it is in the best interests of the parties that approving said agreement and Order of Partial Discharge be granted as prayed for,

NOW, THEREFORE, said foregoing stipulation and agreement shall be, and the same hereby is, APPROVED; and further,

Said petition shall be and hereby is granted and the above-entitled proceedings are DISMISSED WITH PREJUDICE as to permanent indemnity benefits and WITHOUT PREJUDICE as to medical benefits and time loss benefits relating to any future medical that is causally related to the October 18, 2006 injury .

DATED this 19<sup>th</sup> day of Jan-2010 ~~December, 2009~~.

INDUSTRIAL COMMISSION

By \_\_\_\_\_  
Chairman

[Signature]  
Member

[Signature]  
Member



[Signature]  
Assistant Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 20<sup>th</sup> day of Jan. 2010 ~~December, 2009~~, a true and correct copy of the STIPULATION AND AGREEMENT OF PARTIAL LUMP SUM DISCHARGE AND ORDER OF APPROVAL AND PARTIAL DISCHARGE, I.C. #2006-525142, was served by first class mail, postage prepaid upon each of the following:

Kent W. Day  
Law Offices of Harmon, Whittier & Day  
6213 N. Cloverdale Rd., Ste. 150  
P.O. Box 6358  
Boise, ID 83707-6358

Michael J. Walker  
Delay, Curran, Thompson, Pontarolo & Walker, P.S.  
601 W. Main Ave., Suite 1212  
Spokane, WA 99201

Judy Challe

Dec. 22, 2009 9:32AM

BOISE LEGAL  
No. 4871 P. 4  
WLS-210231

## INCOME WITHHOLDING FOR SUPPORT

- ☐ ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)  
☐ AMENDED IWO  
☒ ONE-TIME ORDER/NOTICE - LUMP SUM PAYMENT  
☐ TERMINATION OF IWO

Date: December 22, 2009

☒ Child Support Enforcement (CSE) Agency ☐ Court ☐ Attorney ☐ Private Individual/Entity (Check One)

NOTE: If you receive this document from someone other than a State or Tribal Child Support Enforcement agency or a court, a copy of the underlying order that contains a provision authorizing income withholding must be attached. Or if under State law an attorney in that State, or if under Tribal law a Tribal legal representative, may issue an income withholding order, the attorney or Tribal legal representative must include a copy of the State or Tribal law authorizing the attorney or Tribal legal representative to issue an income withholding order.

State/Tribe/Territory Idaho Case Identifier 221905  
 City/Co./Dist./Tribe \_\_\_\_\_ Order Identifier \_\_\_\_\_  
 Private Individual/Entity \_\_\_\_\_

Liberty Northwest IN RE: Benjamin C. Morris  
 Employer/Income Withholder's Name Employee's/Obligor's Name (Last, First, MI)  
 PO Box 7607 531-78-5099  
 Employer/Income Withholder's Address Employee's/Obligor's SSN (if known)  
 Boise ID 83707 Eden Wendlandt  
Custodial Party/Obligee's Name (Last, First, MI)

Employer/Income Withholder's Federal EIN \_\_\_\_\_

Child's Name (Last, First, MI) Sophia A. Waitman Child's Birth Date 12/20/2004  
Austin S. Waitman 06/07/1997

ORDER INFORMATION: This document is based on the support or withholding order from Child Support Services. You are required by law to deduct these amounts from the employee/obligor's income until further notice.

_____	Per Month	current child support
_____	Per Month	past-due child support - Arrears greater than 12 weeks? <input type="checkbox"/> Yes <input type="checkbox"/> No
_____	Per Month	current cash medical support
\$ _____	Per Month	past-due cash medical support
\$ _____	Per Month	current spousal support
\$ _____	Per Month	past-due spousal support
\$ _____	Per Month	other (must specify) _____

for a total of \_\_\_\_\_ per month to be forwarded to the payee below.

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the Order Information. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\_\_\_\_\_ per weekly pay period. \_\_\_\_\_ per semi-monthly pay period (twice a month).  
 \_\_\_\_\_ per biweekly pay period (every 2 weeks). \_\_\_\_\_ per monthly pay period.

STEP 4: ONE-TIME LUMP-SUM PAYMENT Do not stop any existing IWO unless you receive a termination order.

REMITTANCE INFORMATION: If the employee/obligor's principal place of employment is Idaho, you must begin withholding no later than the first pay period that occurs 15 days after the date of December 22, 2009. Send payment within 7 working days of the of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to % of disposable income for all orders. If the employee/obligor's principal place of employment is not Idaho, see the ADDITIONAL INFORMATION FOR EMPLOYERS AND OTHER INCOME WITHHOLDERS for limitations on withholding, applicable time requirements and any allowable employer's fees.

Case # 231905

Region: 01/E

CSS 157A

OMB 0970-0154 08/2008

EX A.

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Dec. 22, 2009 9:32AM

No. 4671 P. 5

For EFT/EDI instructions, contact the EDT/EDI office at the website listed below. If paying by check, make check payable to: Idaho Child Support Recapping. Include this Remittance Identifier with payment: 231905. Send check to: Idaho Child Support Recapping, P.O. Box 70808, Boise, ID 83707-0108.

RIPS code (if necessary):

Signature (if required by State or Tribal law):

Print Name: K. Bentz

Title of Issuing Official: Self-reliance Supervisor

☒ If checked, you are required to provide a copy of this form to the employee/obligor. If the employee/obligor works in a State or for a Tribe that is different from the State or Tribe that issued this order, a copy must be provided to the employee/obligor even if the box is not checked.

**ADDITIONAL INFORMATION FOR EMPLOYERS AND OTHER INCOME WITHHOLDERS**

State-specific information may be viewed on the OCS Employer Services website located at:  
<http://www.ecf.hhs.gov/programs/cse/newhire/employer/contacts/contacts.htm>

**Priority:** Withholding for support has priority over any other legal process under State law (or Tribal law if applicable) against the same income. If a Federal tax levy is in effect, please notify the contact person listed below.

**Combining Payments:** You may combine withheld amounts from more than one employee/obligor's income in a single payment to each agency/person requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.

**Reporting the Pay Date:** You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the State (or Tribal law if applicable) of the employee/obligor's principal place of employment with respect to the time periods within which you must implement the withholding and forward the support payments.

**Employee/Obligor with Multiple Support Withholdings:** If there is more than one Order/Notice against this employee/obligor and you are unable to fully honor all support Orders/Notices due to federal, State, or Tribal withholding limits, you must follow the State or Tribal law/procedure of the employee/obligor's principal place of employment. You must honor all Orders/Notices to the greatest extent possible, giving priority to current support before payment of any past-due support.

**Lump Sum Payments:** You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. Contact the agency or person listed below to determine if you are required to withhold or if you have any questions about lump sum payments.

**Liability:** If you have any doubts about the validity of the Order/Notice, contact the agency or person listed below. If you fail to withhold income as the Order/Notice directs, you are liable for both the accumulated amount you should have withheld from the employee/obligor's income and any other penalties set by State or Tribal law/procedure.

**Anti-discrimination:** You are subject to a fine determined under State or Tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of a child support withholding.

**Withholding Limits:** You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 U.S.C. 1673(a)); or 2) the amounts allowed by the State or Tribe of the employee/obligor's principal place of employment. Disposable income is the net income left after making mandatory deductions such as: State, Federal, local taxes, Social Security taxes, statutory pension contributions and Medicare taxes. The Federal limit is 50% of the disposable income if the obligor is supporting another family and 50% of the disposable income if the obligor is not supporting another family. However, that 50% limit is increased to 55% and that 50% limit is increased to 55% if the arrears are greater than 12 weeks. If permitted by the State, you may deduct a fee for administrative costs. The support amount and the fee may not exceed the limit indicated in this section.

**OMB Expiration Date - 10/31/2010.** The OMB Expiration Date has no bearing on the termination date or validity of the income withholding order; it identifies the version of the form currently in use.

Case # 231905

Region: 01/E

QSS 167A

OMB 0970-0164 05/2008

Dec. 22, 2009 9:32AM

No. 4871 P. 6

Employee/Obligor's Name: Benjamin D. Morris  
Order Identifier:Case Identifier: 231905  
Employer's Name:

**Arrears greater than 12 weeks?** If the Order Information does not indicate whether the arrears are greater than 12 weeks, then the employer should calculate the COPA limit using the lower percentage.

For Tribal orders, you may not withhold more than the amounts allowed under the law of the Issuing Tribe. For Tribal employers who receive a State order, you may not withhold more than the lesser of the limit set by the law of the jurisdiction in which the employer is located or the maximum amount permitted under section 303(d) of the CCPA (16 U.S.C. 1673 (b)).

Depending upon applicable State law, you may need to take into consideration the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

**Additional Information:****Child Names:**

No additional children

**All Custodial Party/Obligor Names:**Eden Wendlandt, Amber L. Spradman**All Related Cases:**231825, 052031

**NOTIFICATION OF TERMINATION OF EMPLOYMENT:** You must promptly notify the Child Support Enforcement agency and/or the person listed below by returning this form to the corresponding address if:

- ☐ This person has never worked for this employer.  
☐ This person no longer works for this employer.

Please provide the following information for the terminated employee:

Termination date: \_\_\_\_\_ Last known phone number: \_\_\_\_\_

Last known home address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date final payment made to the State Disbursement Unit or Tribal CSE agency: \_\_\_\_\_

Final payment amount: \_\_\_\_\_ New employer's name: \_\_\_\_\_

New employer's address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**CONTACT INFORMATION**

**To employer:** If the employer/income withholding has any questions, contact Customer Service by phone at 1-800-355-9558, or, if calling from the Boise area, 334-2478, by fax at (208) 769-1483, by email at [jdccse@policy-studies.com](mailto:jdccse@policy-studies.com)

Send termination notice and other correspondence to: Regional Self-Reliance Program, 1120 Ironwood Dr. Ste 202, Coeur d'Alene, ID 83814

**To employee/obligor:** If the employee/obligor has any questions, contact Customer Service by phone at 1-800-355-9558 or, if calling from the Boise area, 334-2478, by fax at (208) 769-1483 or by email at [jdccse@policy-studies.com](mailto:jdccse@policy-studies.com)

**IMPORTANT:** the person completing this form is advised that the information may be shared with the employee/obligor

STARR KELSO  
Attorney at Law #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 208-765-3260  
Fax: 208-6646261

Attorney for Claimant Morris

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BENJAMIN MORRIS,	:	
Claimant,	:	
	:	I.C. NO.: 2006-525142
vs.	:	
	:	AFFIDAVIT OF
HAP TAYLOR & SONS, INC.	:	HAROLD DEAN MORRIS
Employer,	:	
	:	
and	:	
	:	
LIBERTY INSURANCE CORP.,	:	
Surety,	:	
<u>Defendants.</u>	:	

STATE OF IDAHO            )  
                                  ss.  
                                  )  
COUNTY OF KOOTENAI )

HAROLD DEAN MORRIS being first duly sworn upon oath hereby states as follows:

1. I am over the age of 18, competent to testify, and make these statements based upon my personal knowledge to which I will testify if requested to, or directed to, in this matter.

EX 13

2. That I am the father of the Claimant, Benjamin Morris.
3. That at, and before, the time that my son, Benjamin Morris, signed the lump sum settlement agreement I was his payee for his Social Security Disability Benefits because he was unable to manage his own personal financial affairs.
4. Michael J. Walker began representing Benjamin on or about March 13, 2008. I began meeting with Benjamin and Mr. Walker after that time. Benjamin gave Mr. Walker, Dr. Stanek his treating physician, and Dan Brownell, a vocational rehabilitation specialist, permission to speak to me regarding him because there were times when he was unable to understand what was being communicated to him or to recall what was being communicated to him.
5. I went to most of Benjamin's appointments with Mr. Walker and Dr. Stanek because he was unable to keep track of the appointments and times. I also spoke with Mr. Walker from time to time on the telephone. I also met with Dan Brownell on a number of occasions when he was meeting with Benjamin.
6. Many of the discussions I had with Mr. Walker pertained to my questions regarding why Liberty was doing what it was doing and why it was denying the treatment that Dr. Stanek was prescribing. He advised me



that Liberty could pretty much do what it wanted to do and I told him that I thought that was what he was suppose to do.

7. I spoke with Mr. Walker about obtaining job training assistance for Benjamin. I was advised that if he got enough settlement for Benjamin that he would be able to take the money and retrain himself.
8. When there were discussions about a settlement offer I questioned it because, at a minimum, it didn't appear to me that there would be sufficient money to pay for retraining. I told Mr. Walker that I didn't believe there was sufficient money to provide Benjamin with retraining.
9. I told Mr. Walker that I was Benjamin's payee and that with regard to financial matters he needed to speak to me about them. He advised me that the state didn't recognize what Social Security did and that he was Benjamin's attorney and not mine. This was the last time that I able to speak with Mr. Walker. One time after this I called to speak with him, he was not available, and thus I was not able to speak with him. In the past he had returned my calls but he did not return this call.
10. I attempted to speak with Dan Brownell about whether there was sufficient money for retraining but I was unable to speak to him about it.

11. That based upon my observations of my son I do not believe that he understood the ramifications, and long term effects, of his actions in signing the lump sum settlement agreement.

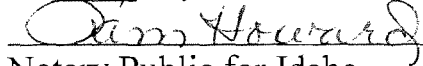
12. I was very concerned that if Benjamin received a lump sum of money, in any amount, it would be gone within a month or so because of his inability to manage his finances.

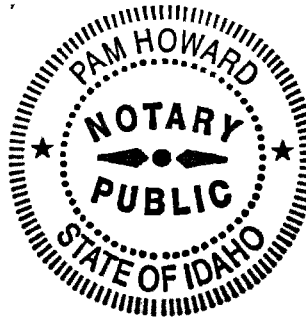
13. Benjamin had his benefits cut off by Liberty since about December 2008 and he was in serious financial straits and under enormous stress.

DATED this 27 day of June, 2011.

  
HAROLD DEAN MORRIS

SUBSCRIBED AND SWORN TO before me the undersigned Notary Public on the 27 day of June, 2011.

  
Notary Public for Idaho  
Residing at Patterson  
My Commission expires: 8/6/16



CERTIFICATE OF SERVICE: I certify that a copy was mailed on the \_\_\_\_ day of June, 2011 to:

Kent W. Day  
Attorney at Law  
6213 Cloverdale Rd. Ste. 150



*NW Medical Rehabilitation*  
1315 N. Division  
Spokane, WA 99202  
Phone: 509-624-0908 Fax: 509-459-0881

DATE: 03/12/2009

RE: Benjamin D Morris  
DOB: 07/24/1976

Michael J. Walker  
Attorney at Law  
601 W. Main  
Suite 1212  
Spokane, WA 99201-0684

Dear Mr. Walker:

I apologize for the delay in response to your 12-08-08 letter requesting the following information:

1. Has he reached maximum medical improvement?

No. In my opinion he still has issues from his industrial injury that need to be addressed if he is to be successful in returning to work. This includes:

A. Teaching him compensatory techniques to manage his headache pain. This could be through a pain clinic or with neuropsychological counseling with biofeedback.

B. Not related to industrial accident, but he must be seen by a PCP to manage his high blood sugars, which could be causing his feeling of malaise and fatigue.

C. He needs an objective evaluation by a dentist with expertise in TMJ conditions. He has had two evaluations, each of which conflict with each other in opinion. He has complained of jaw pain since his injury without any type of treatment to focus on resolution of the issue.

2. Do you concur with recommendation for TMJ evaluation? Yes.

3. I agree that he falls into Class 1 for his traumatic brain injury, however Class 1 Category is 1-14% impairment whole person not 1-10%. Since he did not have a pre-existing condition and he sustained problems with personality changes, feelings of anger, being overwhelmed, as well as difficulty with follow through, I would give him 10 versus 5%.

He has chronic pain and spasm in his neck, as well as headaches, which were excluded. According to Section 5a on page 584, he would fall into the mild category for pain, which would add an additional 3%. If a pain clinic is approved, this may indeed remove the chronic pain rating.

I agree with the rating for PTSD.

Therefore utilizing the combined values table of the AMA Guideline,  $10+5=15\% + 3=18\%$  versus 10%, he would qualify for an 18% whole person impairment rating related to the industrial accident of 10-18-06 and not 10%. Also any impairment related to the TMJ would need to be added.

Ex 14

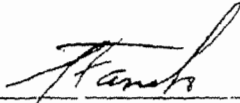
99

Page 2 of 2 Name: Benjamin D Morris DOB: 07/24/1976 Date: 03/12/2009

4. I agree with the work restrictions recommended by Dr. Beaver and Dr. Lyons. In addition, he should be limited to light moderate to light duty work because of neck and headache pain. I also feel he should be restricted from high pressure jobs as this will create anxiety and decompensation.

If you have any further questions, please do not hesitate to call my office at 509-624-0908.

Sincerely,



Karen A. Stanek MD



*NW Medical Rehabilitation*  
1315 N. Division  
Spokane, WA 99202  
Phone: 509-624-0908 Fax: 509-459-0881

DATE: 08/02/2009  
RE: Benjamin D Morris  
DOB: 07/24/1976

Annette Yorgason, Case Manager  
Liberty Northwest  
Fax: 1-800-256-3856

Dear Ms. Yorgason:

I am in receipt of the reports from the two day evaluation performed in May at St. Alphonsus Rehabilitation in Boise. I am in agreement with the majority of the evaluations and opinions of Dr. Robert Calhoun, Peggy Wilson, and Dr. Kevin Krafft, however I am very disappointed that the original intent of my referral to the STAR program was not addressed.

When I requested authorization for Ben to participate in this program, I was well aware of his probable symptom magnification, physical capabilities in clinic, depression, and lack of motivation to recover. My intention was for Ben to be involved in a multidisciplinary program to address his headaches, neck pain, TMJ, deconditioning, assistance within diabetic management, psychological issues including the anger he is experiencing, and nutrition/weight loss. I take issue with the evaluators assuming that Ben would be unsuccessful in the program so they basically dismissed him. Ben is still not back to work and nothing has been gained.

I have included a copy of my last dictation for your review. I am requesting the following:

1. Botulinum Toxin to reduce the neck and shoulder muscle spasms that have failed to respond to other modalities including pharmacology, physical therapy, or massage therapy. Ben has responded well in the past to trigger point injections using Lidocaine but unfortunately it is a very short acting medication. Therefore I am recommending 4 treatments with Botulinum Toxin, which will provide up to 90 days of relief for each treatment. I anticipate that this in conjunction with neck and shoulder exercises that he has already been shown in physical therapy will allow strengthening of the weak muscles during the efficacy of the Botulinum Toxin to facilitate muscle balance once the medication wears off. This may in effect help to reduce or resolve his headaches and neck pain.

Ex 15

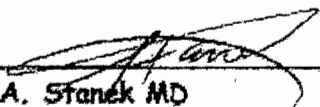
101

2. Vision check in response to his complaint of vision changes and photophobia since his injury.
3. Psychological counseling to address his chronic pain issues, depression, anxiety, and anger.

The requested treatments need not pre-empt vocational rehabilitation, which leads me to my next topic of discussion. It has come to my attention that there has been a conflict of interest with his current counselor, Roy Murdock and Ben will no longer work with him. Ben has re-established a working relationship with Dan Brownell to continue exploring suitable work possibilities.

Please authorize my requests as outlined above. Should you require additional assistance or information please contact my office at 509-624-0908 within 30 working days. I look forward to hearing from you.

Sincerely,

  
\_\_\_\_\_  
Karen A. Stanek MD

KAS/blm

**Delay, Curran, Thompson, Pontarolo & Walker, P.S.**  
*Attorneys at Law*

601 West Main, Suite 1212 • Spokane, WA 99201-0684  
Phone (509) 455-9500, Toll-Free Number 1-800-572-0933  
Fax (509) 623-1446

Smith Tower • 506 2nd Ave., 25th Floor • Seattle, WA 98104  
Phone (206) 343-8535

**All Correspondence to Spokane Office**

JOSEPH P. DELAY  
J. DONALD CURRAN  
ROBERT H. THOMPSON  
MICHAEL J. PONTAROLO  
MICHAEL J. WALKER\*\*  
•  
CLARENCE A. BOLING (1928-1977)

\*\*Admitted in Washington & Idaho

June 18, 2009

Karen A. Stanek, M.D., PhD.  
1315 N. Division St.  
Spokane, WA 99202

Re: Benjamin Morris  
Idaho Industrial Insurance Claim No: 2007-525142

Dear Doctor Stanek:

As you are aware, this office represents the above-referenced Idaho injured worker. We The Idaho Surety, Liberty Mutual, encouraged your office to refer the claimant to the Work STARR program in Boise for their pain clinic/work hardening program. We had major concerns regarding this program based upon past experience that this program is defense oriented and little more than an IME facility. It is routinely the result of their assessments that that injured workers are faking their injuries and are capable of working without restriction. I am in receipt of the reports from the Work STARR program in this case, and it appears Mr. Morris' case is no exception.

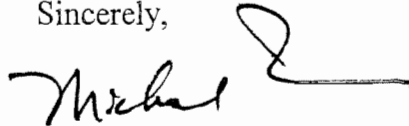
I have enclosed a copy of these records for your review. As you can see, the claimant did not get beyond the initial assessment stage in this program. After a couple of days, the program determined Ben would not benefit and that he could return to work without restriction. The pain clinic/work hardening program then immediately shifted to an impairment rating evaluation at Liberty's request without proper notice to the claimant, and despite assurances this program was strictly for treatment purposes. Ben received no treatment at the Work STARR program.

We feel the Boise program did not give him a fair shake, and we would appreciate your input on this issue. Please review this documentation and comment on whether you agree or disagree with their evaluation and conclusions. You have been the claimant's attending physician for the longest period and have a better understanding of his condition than the

physicians retained by the Surety for purposes of performing a covert IME examination without any form of treatment.

If you have any questions, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael", followed by a long, horizontal, slightly wavy line that extends to the right.

MICHAEL J. WALKER

MJW:je

Enclosures: Work STARR Records

cc: Benjamin Morris





*NW Medical Rehabilitation  
1315 N. Division  
Spokane, WA 99202  
Phone: 509-624-0908 Fax: 509-459-0881*

DATE: 9/14/2009

RE: Benjamin D Morris  
DOB: 07/24/1976

Michael Walker  
Attorney at Law  
Fax: 623-1446

Dear Mr. Walker:

I am in receipt of your letter dated 08-26-09, regarding Benjamin Morris. I apologize for the delay in my response. I have reviewed all of the reports from the STAR program in Boise and my assistant has spoken to the case manager for Liberty NW, Annette Yorgason.

I am in agreement with the majority of the evaluations and opinions of Dr. Robert Calhoun, Peggy Wilson, and Dr. Kevin Krafft, however the original intent of my referral to the STAR program was not addressed. When I requested authorization for Ben to participate in this program, I was well aware of his probable symptom magnification, physical capabilities in clinic, depression, and lack of motivation to recover. It should also be noted that a two day evaluation at STAR does not indicate how Ben would do in an 8-hour per day/40 hour per week job. The simple fact remains that Ben is still not back to work. My intention was for Ben to be involved in a multidisciplinary program to address his headaches, neck pain, TMS, deconditioning, assistance within diabetic management, psychological issues including the anger he is experiencing, and nutrition/weight loss. What I take issue with is that the evaluators assumed that Ben would be unsuccessful in the program so they basically dismissed him. And Ben is still not back to work.

At this point I think that it would be in Ben's best interest to move forward. Ben should work closely with a vocational rehabilitation counselor to determine suitable work situations. I have explained to him that this would likely not include any higher education opportunities due to his skill level at the time of his injury but on-the-job training should be appropriate.

It has come to my attention that there has been a conflict of interest with his current counselor, Roy Murdock, and Ben will no longer work with him. Ben had attempted to re-establish a working relationship with Dan Brownell, but I am unsure if this has been successful.

In conclusion, while I have issues with how the evaluation went at STAR, I do agree that Ben is capable of working and should focus on that goal. I will continue to work with Ben in that regard. If I can be of further assistance, please contact my office at 509-624-0908.

Sincerely,

  
Karen A. Stanek MD

Ex 16

**Delay, Curran, Thompson, Pontarolo & Walker, P.S.**

*Attorneys at Law*

601 West Main, Suite 1212 • Spokane, WA 99201-0684

Phone (509) 455-9500, Toll-Free Number 1-800-572-0933

**Fax (509) 623-1446**

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Phone (206) 343-8535

**All Correspondence to Spokane Office**

JOSEPH P. DELAY

J. DONALD CURRAN

ROBERT H. THOMPSON

MICHAEL J. PONTAROLO

MICHAEL J. WALKER\*\*

CLARENCE A. BOLING (1928-1977)

*\*\*Admitted in Washington & Idaho*

September 23, 2009

Ben Morris  
550 Hydra Place, Unit A  
Post Falls, ID 83854

Re: Idaho Industrial Insurance Claim

Dear Mr. Morris:

Enclosed please find a copy of the paperwork I received from Dr. Stanek in response to the IME. As you can see, she has concluded that you are capable of working in some capacity, even though she does not completely agree with the STAR program conclusions. She has recommended treatment in the form of botulinum toxin injections, a vision check and psychological counseling to address chronic pain issues. I have forwarded this documentation to defense counsel for review and consideration and asked that they authorize the treatment recommended by Dr. Stanek. I will keep you advised as to their response.

In the meantime, I encourage you to contact Dan Brownell and follow up with any job leads you might have as I would not anticipate resolution prior to hearing in this matter.

Sincerely,



MICHAEL J. WALKER

MJW:je

Enclosure: As stated above

Ex 17

106

**Delay, Curran, Thompson, Pontarolo & Walker, P.S.**

*Attorneys at Law*

601 West Main, Suite 1212 • Spokane, WA 99201-0684  
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MICHAEL J. WALKER\*\*  
•  
CLARENCE A. BOLING (1928-1977)

*\*\*Admitted in Washington & Idaho*

September 23, 2009

Kent Day  
Law Offices of Harmon, Whittier & Day  
P.O. Box 6358  
Boise, ID 83707-6358

**VIA FAX: (800) 972-3213**

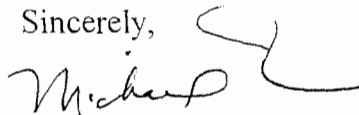
Re: Morris v. Hap Taylor & Sons  
IC No: 06-525142

Dear Kent:

I am in receipt of the attached correspondence dated August 2, 2009 from Dr. Stanek to Liberty. My client would like to proceed with the treatment recommendations as outlined in this letter. Please advise as to whether your client will authorize the same.

Thank you for your prompt attention to this matter.

Sincerely,



MICHAEL J. WALKER

MJW:je

Enclosures: As noted above

cc: Benjamin Morris

Ex 18

107



*NW Medical Rehabilitation*  
1315 N. Division  
Spokane, WA 99202  
Phone: 509-624-0908 Fax: 509-459-0881

DATE: 08/02/2009

RE: Benjamin D Morris

DOB: 07/24/1976

Annette Yorgason, Case Manager  
Liberty Northwest  
Fax: 1-800-256-3856

Dear Ms. Yorgason:

I am in receipt of the reports from the two day evaluation performed in May at St. Alphonsus Rehabilitation in Boise. I am in agreement with the majority of the evaluations and opinions of Dr. Robert Calhoun, Peggy Wilson, and Dr. Kevin Krafft, however I am very disappointed that the original intent of my referral to the STAR program was not addressed.

When I requested authorization for Ben to participate in this program, I was well aware of his probable symptom magnification, physical capabilities in clinic, depression, and lack of motivation to recover. My intention was for Ben to be involved in a multidisciplinary program to address his headaches, neck pain, TMJ, deconditioning, assistance within diabetic management, psychological issues including the anger he is experiencing, and nutrition/weight loss. I take issue with the evaluators assuming that Ben would be unsuccessful in the program so they basically dismissed him. Ben is still not back to work and nothing has been gained.

I have included a copy of my last dictation for your review. I am requesting the following:

1. Botulinum Toxin to reduce the neck and shoulder muscle spasms that have failed to respond to other modalities including pharmacology, physical therapy, or massage therapy. Ben has responded well in the past to trigger point injections using Lidocaine but unfortunately it is a very short acting medication. Therefore I am recommending 4 treatments with Botulinum Toxin, which will provide up to 90 days of relief for each treatment. I anticipate that this in conjunction with neck and shoulder exercises that he has already been shown in physical therapy will allow strengthening of the weak muscles during the efficacy of the Botulinum Toxin to facilitate muscle balance once the medication wears off. This may in effect help to reduce or resolve his headaches and neck pain.

2. Vision check in response to his complaint of vision changes and photophobia since his injury.
3. Psychological counseling to address his chronic pain issues, depression, anxiety, and anger.

The requested treatments need not pre-empt vocational rehabilitation, which leads me to my next topic of discussion. It has come to my attention that there has been a conflict of interest with his current counselor, Roy Murdock and Ben will no longer work with him. Ben has re-established a working relationship with Dan Brownell to continue exploring suitable work possibilities.

Please authorize my requests as outlined above. Should you require additional assistance or information please contact my office at 509-624-0908 within 30 working days. I look forward to hearing from you.

Sincerely,



---

Karen A. Stanek MD

KAS/blm

**LAW OFFICES OF  
HARMON, WHITTIER & DAY***Employees of the Liberty Mutual Group*

E. Scott Harmon  
Monte R. Whittier  
Kent W. Day<sup>1</sup>  
Mary L. McDougal Abajian

PO Box 6358  
Boise, ID 83707-6358

6213 N Cloverdale Road Ste 150  
Boise, ID 83713-2215

<sup>1</sup>Admitted in Idaho & Oregon

Telephone: (208) 327-7564  
Facsimile: (800) 972-3213

Paralegals:  
Sharon Knipe  
Curtis Montgomery<sup>2</sup>  
Patricia Shosted, CPCU, CLA

<sup>2</sup>Oregon Case Only

Direct Number: (208) 327-7571  
Sharon.Knipe@LibertyMutual.com

October 14, 2009

**VIA FACSIMILE (509)623-1446**

Michael J. Walker  
Attorney at Law  
601 W. Main Ave., Ste. 1212  
Spokane, WA 99201-0635

RE: CLAIMANT : Benjamin Morris  
I. C. CASE NO. : 2006-525142  
CLAIM NO. : WC665-210231-00

Dear Mr. Walker:

Pursuant to Jennifer's questions regarding prescriptions and a change of status letter recently received, please see the following and attached breakdown of indemnity payments.

First, the following prescriptions have been authorized:

- 1) Codeine for pain.
- 2) Methocarbano – muscle relaxer.
- 3) Pristiq Ter for depression.
- 4) Oxycodone has not been authorized.

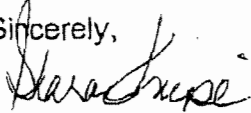
Second, a change of status was issued regarding the PPI payment and was sent in error. The case manager is issuing another check today in the amount of \$976.64 which will be reduced for child support. The exact amount I do not have yet. From my understanding, this will pay out the PPI in full.

I have attached a copy of the indemnity payments paid, however, this will not include the payment mentioned above.

Ex 19

Should you have any questions, please let me know.

Sincerely,



Sharon R. Knipe  
Paralegal

Encl.

cc: Annette Yorgason, Case Manager

Dan W. Brownell  
Vocational Rehabilitation Consultant  
*35 years experience – over 3,000 cases*

402 South Corbin Road  
Post Falls, ID 83854  
Telephone – 208.640.6807  
Email: [DMBrownell@Roadrunner.com](mailto:DMBrownell@Roadrunner.com)

Summary Report of Employability

12/15/09

Claimant: Ben Morris  
SSN: [REDACTED]  
Claimant Contact Number: 208-277-5505  
Address: 550 Unit A Hydro Place, Post Falls, Idaho 83854  
Location/LMS Area: Coeur d'Alene, Post Falls, Hayden; Idaho  
Date of Birth: [REDACTED]  
Date of Injury: 10/18/2006  
Employer: Norms Utility Contracting  
Wage: \$14.00/hr.  
Occupation: Laborer

Nature of Injuries:

On 10/18/2006 claimant was hit on the occipital head region by 25-lb. boulder, sustained loss of consciousness and subsequent traumatic brain injury, ongoing headaches, neck pain, dizziness, loss of memory and cognitive deficits; residual anger management issues.

This employability report was conducted in response to a request for a vocational assessment. This report includes a professional assessment of future vocational abilities/disabilities and any residual deficits, as they relate to the specific injury. I carefully considered the effects of the injury on the claimant's ability to obtain and keep competitive employment. I also took into account long-term abilities for future earning capacity. This evaluation is conducted in the same manner as widely accepted by professionals in the field of vocational rehabilitation and vocational consulting practices. This report does not include retyping medical/vocational reports that are readily available to the parties of the claim.



The medical, technical and vocational records and correspondence utilized and relied on for this evaluation included:

**Medical Records:**

- Dr. Karen A Stanek, MD
- Dr. Nickol, MD
- Dr. Horan, MD
- Dr. Krafft, MD
- Dr. Daniel Hayes, MD
- Dr. Craig Beaver, MD; Dr. George Lyons, MD; Dr. Calhoun, MD;  
Dr. Craig Stevens, MD; Dr. Ludwig, MD; Dr. Crow, Dentist;  
Dirk Baird, PT; Ruben Ertter, Speech Therapist; Dr. Beaton, MD

**Vocational Records and Resources:**

- Idaho Industrial Commission Rehabilitation Division - The entire case file was acquired, including all interviews and detailed work history with yearly wage earnings concerning Ben Morris.
- Handbook for Analyzing Jobs (HAJ)
- Dictionary of Occupational Titles (DOT)
- Idaho Occupational Employment and Wage Survey with Market Survey Area (MSA) and Standard Occupations Classifications (SOC) coded occupations inclusive of numbers of employed workers and current wage rates
- E-CIS System inclusive of all listed job openings available in claimant's LMA
- Report from Bob Cornell, Vocational Evaluator

**Contacts and Correspondence:**

- Direct consultation with claimant concerning his present physical capabilities, employment status, activities of daily living, and verification of records.
- Consultation with claimant's attorney, Mike Walker, acquisition of records and reports.

**Physical and Psychological Functional Capabilities:**

Physical and psychological capacities are very significant when you consider various types of work and work requirements when trying to place a claimant into a competitive job. Functional limitations are based upon medical and subjective information. The claimant has not had the opportunity of a full Functional Capacities Evaluation.

- **Medical Information:**

The most up-to-date and relative description of the claimant's functional capabilities is through his attending Physician, Dr. Karen Stanek. The claimant

continues to be involved in treatment and continues with anti-depressant medications. Dr. Stanek has stated that the recent STAR program was not helpful to the claimant and the two day evaluation did not prove how the claimant would perform in an 8-hour day/40-hour week job position. Additionally, the program did not successfully address the claimant's ongoing headaches, neck pain, TMJ, deconditioning, assistance with diabetic management, nutrition/weight loss, psychological issues including anger management. The evaluators at STAR dismissed the claimant and the claimant has still not returned to employment. Noted is the fact that the claimant still has sleep challenges, severe headaches, problems with anger management, loss of memory and cognitive abilities. He should not return to his previous type of employment and should avoid climbing and unprotected heights.

▪ **Subjective Information:**

I interviewed the claimant on 12/15/09 in order to update his current subjective physical capabilities and ADL activities. Also present at the meeting was the claimant's roommate, Mr. Chris Corcoran, a long-term friend who also verified the claimant's observed abilities. The claimant states he sleeps sporadically at a maximum of two hours, due to neck pain, headaches and bad dreams. He wakes tired, irritable and unmotivated. He is short-tempered and stresses easily. He does not like being around people and can only handle one topic of discussion at a time. He dislikes talking on the phone. He frequently has temper outbursts. Recently he lost his girlfriend, who he lived with. She worked as a psychiatric aide and helped the claimant greatly until she could no longer deal with him. The claimant related a recent incident where he tried to set up a bank account; he became abrupt and abusive to the teller and stormed out of the bank. Chris, his roommate, relates that the claimant forgets frequently, cannot handle stress, and frustrates easily. Chris also relates that he does not see how the claimant could be employed, as he does not get along with other people especially in groups. Sunlight bothers the claimant and he spends a great deal of time closed in his darkened room.

**Educational Background:**

This information is covered sufficiently in the ICRD files on record. The claimant is a High School Graduate, however, he has lost his education recall due to TBI.

**Vocational History:**

This information is covered sufficiently in the ICRD files on record. The claimant has transferable skills working as a Landscape Laborer.

**Employability Evaluation and Recommendations:**

I have the fortunate experience of working on this case prior to my leaving the ICRD in February 2009. Since my leaving, the case was worked on by ICRD consultant, Roy Murdock. Recently there was a conflict between the claimant and Mr. Murdock and the claimant's case was closed without placement and employment being accomplished. I have recently been hired privately by the claimant and his attorney to give comment and direction to this case. I met with the claimant and acquired updated information. This case is an ongoing TBI with no resolve to the claimant's need for psychological and vocational assistance. The claimant has been made eligible for SSDI benefits under the disability guidelines. The claimant is also eligible for IDVR services under their disability guidelines. The claimant cannot return to his time of injury employment nor can he return to employment within his previous heavy-duty employment as a Landscape Laborer. The claimant has interpersonal challenges with coworkers and requires a non-stressful sheltered work environment. The claimant has an anger management challenge that would affect his employability. I highly recommend, as has his attending physician, that the claimant be involved in a sheltered employment placement with a job coach assigned; along with a work hardening program in order for this case to resolve successfully. I have proceeded to test this claimant and his occupational profile against the competitive labor market, inclusive of DOL documented labor market statistics and the most recent wage and hour employment report. The claimant has incurred a significant loss of wages and loss of access to the competitive labor market estimated to be at 50- 55% above his current listed PPD.

I am prepared to comment further in regards to the claimant's employability, if called upon to do so.

Respectfully submitted by Dan Brownell.

**Delay, Curran, Thompson, Pontarolo & Walker, P.S.**  
*Attorneys at Law*

601 West Main, Suite 1212 • Spokane, WA 99201-0684  
Phone (509) 455-9500, Toll-Free Number 1-800-572-0933  
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Phone (206) 343-8535

**All Correspondence to Spokane Office**

JOSEPH P. DELAY  
J. DONALD CURRAN  
ROBERT H. THOMPSON  
MICHAEL J. PONTAROLO  
MICHAEL J. WALKER\*\*  
•  
CLARENCE A. BOLING (1928-1977)

*\*\*Admitted in Washington & Idaho*

December 17, 2009

Kent Day  
Law Offices of Harmon, Whittier & Day  
P.O. Box 6358  
Boise, ID 83707-6358

**VIA FAX: (800) 972-3213**

Re: Morris v. Hap Taylor & Sons  
IC No: 06-525142

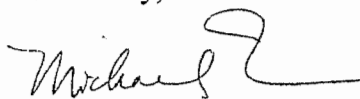
Dear Kent:

Based upon the vocational report of Dan Brownell, my client is willing to settle the indemnity side of this case for \$68,000 in new money.

This figure gives your client credit for the previously paid 10% PPI, even though Mr. Brownell believes the 50-55% PPD is above and beyond the PPI.

We recognize retroactive child support and Mr. Hannon's lien will need to be satisfied from this gross amount.

Sincerely,



MICHAEL J. WALKER

MJW:mw

cc: Benjamin Morris

Ex 21

**Delay, Curran, Thompson, Pontarolo & Walker, P.S.**

*Attorneys at Law*

601 West Main, Suite 1212 • Spokane, WA 99201-0684

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Fax (509) 623-1446

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**All Correspondence to Spokane Office**

JOSEPH P. DELAY  
J. DONALD CURRAN  
ROBERT H. THOMPSON  
MICHAEL J. PONTAROLO  
MICHAEL J. WALKER\*\*  
•  
CLARENCE A. BOLING (1928-1977)

\*\*Admitted in Washington & Idaho

December 18, 2009

Kent Day  
Law Offices of Harmon, Whittier & Day  
P.O. Box 6358  
Boise, ID 83707-6358

**VIA FAX: (208) 327-7509**

Re: Morris v. Hap Taylor & Sons  
IC No: 06-525142

Dear Kent:

Thank you for your counter-offer of December 10 (sic). My client has authorized me to accept Liberty's offer of \$54,381 in gross new money on the indemnity side, with the clear understanding this is a partial settlement and does not resolve the medical side. We are willing to enter into further settlement discussion in an attempt to resolve the medical side once you have the MSA information compiled. I trust that will be soon.

My client is in need of these settlement funds as soon as possible. Please expedite preparation of the partial LSS documentation. I can review the same by e-mail next week while I am out on vacation. My e-mail address is [dctpw@aol.com](mailto:dctpw@aol.com). Based upon this partial LSS, I have no objection to vacating the January 5, 2010 hearing to give us more time to work on the medical side of the case. Feel free to advise the IC of the same.

Sincerely,



MICHAEL J. WALKER

MJW:mw

cc: Benjamin Morris

EX 22

117

**Delay, Curran, Thompson, Pontarolo & Walker, P.S.**

*Attorneys at Law*

601 West Main, Suite 1212 • Spokane, WA 99201-0684

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MICHAEL J. WALKER\*\*

CLARENCE A. BOLING (1928-1977)

*\*\*Admitted in Washington & Idaho*

December 21, 2009

Ben Morris  
550 Hydra Place, Unit A  
Post Falls, ID 83854

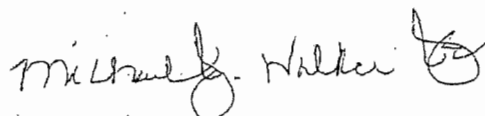
Re: Idaho Industrial Insurance Claim

Dear Mr. Morris:

Per our discussion last Friday, and your authorization, I have accepted Defendant's counter-offer of \$54,381.00 in new money on your behalf. I will keep you advised as to further developments, and will push Liberty to expedite the Lump Sum Settlement paperwork.

Once I have additional information on the medical side of things, I will advise you.

Sincerely,



MICHAEL J. WALKER

MJW:je

Ex 23

**Delay, Curran, Thompson, Pontarolo & Walker, P.S.**

*Attorneys at Law*

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MICHAEL J. WALKER\*\*

\* CLARENCE A. BOLING (1928-1977)

\*\*Admitted in Washington & Idaho

December 21, 2009

Ben Morris  
550 Hydra Place, Unit A  
Post Falls, ID 83854

Re: Idaho Industrial Insurance Claim

Dear Mr. Morris:

Enclosed please find an advance toward the pending settlement in the amount of \$1,000.00. Please review and sign the statement below confirming receipt and acknowledgment of the terms of this advance.

Sincerely,

  
MICHAEL J. WALKER

MJW:je

Enclosure: Advance check totaling \$1,000.00

I, Ben Morris, accept the attached check for \$1,000.00 from Delay, Curran, Thompson, Pontarolo & Walker, P.S., as an advance toward the pending settlement of my workers' compensation claim. I recognize the law firm will deduct this amount from my net settlement proceed entitlement upon final disbursement.

Dated this 21 day of December, 2009.

  
Benjamin Morris

EX 24

119-

**Delay, Curran, Thompson, Pontarolo & Walker, P.S.**

*Attorneys at Law*

601 West Main, Suite 1212 • Spokane, WA 99201-0684

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MICHAEL J. WALKER\*\*

CLARENCE A. BOLING (1928-1977)

**All Correspondence to Spokane Office**

*\*\*Admitted in Washington & Idaho*

January 14, 2010

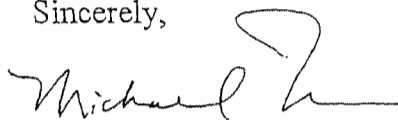
Ben Morris  
550 Hydra Place, Unit A  
Post Falls, ID 83854

Re: Idaho Industrial Insurance Claim

Dear Mr. Morris:

Per our discussion today, I am enclosing a firm check for \$2,000 to tide you over until the settlement proceeds arrive. This is strictly an advance by our firm to be deducted from your settlement proceeds in order to help you out financially on a temporary basis. As you are aware, this is the second advance check our firm has provided you with the previous advance being \$1,000. We will be deducting total advances of \$3,000 from your net settlement proceeds upon final disbursement.

Sincerely,



MICHAEL J. WALKER

MJW:je

Ex 25

120



Delay, Curran, Thompson, Pontarolo & Walker, P.S.

*Attorneys at Law*

601 West Main, Suite 1212 • Spokane, WA 99201-0684

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MICHAEL J. PONTAROLO

MICHAEL J. WALKER\*\*

CLARENCE A. BOLING (1928-1977)

All Correspondence to Spokane Office

\*\*Admitted in Washington & Idaho

January 27, 2010

Ben Morris  
550 Hydra Place, Unit A  
Post Falls, ID 83854

Re: Idaho Workers' Compensation Settlement

Dear Mr. Morris:

Enclosed please find a check for \$27,453.53 reflecting your net settlement. Per our agreement, I have deducted the \$3,000 in advances we provided you as we awaited receipt of these settlement funds. I have also enclosed a copy of the final settlement documents for your file. I have also enclosed a copy of the letter I forwarded to Mr. James Hannon to cover his attorney fee lien on your case. As you can see in the settlement documents, Liberty has paid your child support lien obligation of \$7,734.97 by way of separate check.

As we discussed, this settlement finalizes the monetary side of your claim. It does not finalize the medical side of the claim. It has been a pleasure working with you in regard to this matter.

Thank you for your cooperation and consideration.

Sincerely,



MICHAEL J. WALKER

MJW:mw

Enclosures: As noted above

Ex 26

DIRNE COMMUNITY HEALTH CENTER  
OFFICE VISIT NOTE

#5

Patient Name MORRIS, BEN DOB [REDACTED] Date 5/26/10

Medication and Allergies updated in EHR Q/N Pharmacy WG/CDA

Last Pap \_\_\_\_\_ Last Mammogram \_\_\_\_\_

Ht \_\_\_\_\_ in Wt 226 lb Temp \_\_\_\_\_ P \_\_\_\_\_ R \_\_\_\_\_ BP \_\_\_\_\_ / \_\_\_\_\_ o2 \_\_\_\_\_ LMP \_\_\_\_\_

Chief Complaint: PX FOR PSR SERVICES

Nurse Notes: \_\_\_\_\_

NURSE / MEDICAL ASSISTANT SIG: [Signature] CMA/MA/LPN

213

HPI: Drove himself today  
HA, dizzy, & vomited.

didn't F/U'd to Stoney →  
had back pain to Prostig  
could do go back to landscape / construction  
worsened by HA

REVIEW OF SYSTEMS: (check box if normal, otherwise specify)

CONST: ☐ \_\_\_\_\_ RESP: ☐ \_\_\_\_\_ CV: ☐ \_\_\_\_\_  
RENAL: ☐ \_\_\_\_\_ SKIN: ☐ \_\_\_\_\_HEME: ☐ \_\_\_\_\_

PHYSICAL EXAM: (check box if normal, otherwise specify)

GEN: ☐ A&OX3 NAD \_\_\_\_\_

NECK: ☐ SUPPLE, NO THYROMEGALY/MASS, NEG LYMPH NODES \_\_\_\_\_

RESP: ☐ RESP EXCURSIONS SYMMETRIC, CTAB \_\_\_\_\_

CV: ☐ KKK, NO M/R/G, NO JVD, PMI NONDISPLACED \_\_\_\_\_

CAROTIDS: ☐ NL UPSTROKES BILATERALLY, NO BRUITS \_\_\_\_\_

ABD: ☐ SOFT, NT/ND, BT'S x 4 QUADRANTS, NO HSM/MASSES \_\_\_\_\_

EXTR: ☐ WARM, WELL PERFUSED, NO C/C/E \_\_\_\_\_

SKIN: ☐ WARM, DRY, NO RASHES \_\_\_\_\_

OTHER: \_\_\_\_\_

Vomited Dinner  
next day.

Ex 27

Ca 5/27/10

## Dictation and Reports [Continued]

LABS/ SCANNED LABS [Continued]

06/16/2010

RUN DATE: 06/16/10 Kootenai Medical Center ER Dpt \*LIV. PAGE 3  
RUN TIME: 1609 Nurse Patient Summary  
RUN USER: ARM38

Patient: MORRIS, BENJAMIN D Acct No.: KM4294629 Unit No.: KM00032733  
ED Physician: Zurosky, Jeffrey M Age/sex: 33/M Loc: KM.BHE  
Chief Complnt: Police Hold Status: DIS IN DOB: [REDACTED]

FEEL THAT WILL MATERIALIZE. TEXTED SUICIDAL STATEMENTS TO SISTER WHO CALLED PD. DENIES  
SUICIDE PLAN. HEAD INJURY FROM MOVING A ROCK AT WORK IN 2006, HASN'T BEEN THE SAME  
SINCE. MULTIPLE SURGERIES AND LOTS OF PAIN. STRUGGLED WITH DEPRESSION SINCE THEN. ;  
Psychiatric History/ Depression; Psychiatric Treatment History/ None;  
Hx of Psychiatric Testing? N; Describe: DENIES; Suicidal Ideations? Y; Describe: DENIES  
A PLAN; Do You Have A Plan? N; Weapons or Plan Accessible? N; Describe: DENIES;  
Hx Attempt/Mutilation? N; Describe: DENIES; Homicidal Thoughts/Attempts? N; Describe:  
DENIES; Hallucination/Thought Disturbances? N; Describe: DENIES; Patient Affect-LOC/  
Alert, Calm, Responsive; Disoriented to/ None; Recent Change In/ Sleep; Describe:  
DIFFICULTY SLEEPING SINCE HEAD INJURY. INCREASED ANXIETY, POOR SHORT TERM MEMORY.;  
Current Stressors/ Social, Work; Describe: CHRONIC PAIN IN NECK NON STOP, HEADACHES.  
UNABLE TO WORK.; Hx of Violence/ None; Describe: DENIES; Substance Abuse History/ No;  
Substance Abuse Treatment/ No; Family Hx Substance Abuse/ Denies; Tobacco? Y; Describe:  
1 PPD; Alcohol? N; Marijuana? N; Hallucinogens? N; Cocaine/Crack? N; Amphetamines? N;  
Heroin? N; Inhalants? N; Ecstasy or Special K? N; OTC? N; Prescription? N;  
Detox Symptoms/ None; Past Detox Symptoms/ None; School/Grade: N/A; Referred By: CDA PD;  
Physician Last Seen: NONE; Medications/Condition reported to: DR KIRBY/DR ZUROSKY;  
Pt/Family Needs Interpretive Services? N; NIBH Comment: CONSULTED WITH DR KIRBY, PT WILL  
BE ADMITTED TO KKH ON A KOOTENAI COUNTY POLICE HOLD.

### DC Screen

06/01/10 1459 DC Disposition (REQUIRED)

Masten, Wendy K RN

Belongings-Valuables/ Patient

Report to:

DON RN/KKH

Staff Present During Transfer/ CNA

Time: 1459

Comment:

SECURITY TO ESCORT PT.

### Departure Information

Primary Impression: SUICIDAL IDEATIONS, MED CLEARANCE EXAM

Primary Impression:

Primary Impression:

Disposition: NIBH EAST

OTH

Departure Date/Time: -

Comment:

Condition: Fair

Referrals:

No, Family Doctor

Additional Instructions:

Pt Instructions:

Departure Forms: Routine Aftercare

### Social History

06/01/10 1338 Psychosocial (REQUIRED)

Masten, Wendy K RN

Factors Affecting Ability to Learn/ Cognitive

Living arrangement/ House

Ex 28

123

# Ithy Connections Referral Form

## Member Information:

Date 6/24/10 Member Name BENJAMIN MORRIS  
 Member Medicaid #: 0000812113 Member Date of Birth [REDACTED]

## Referral Information:

Referral Type: 1. ☒ Specific Provider 2. ☐ Provider Specialty 3. ☐ Provider Type 4. ☐ Diagnosis 5. ☐ Global

Referring Primary Care Provider:

Primary Care Provider Organization Name: DIRNE HEALTH CENTER

Specific Referring Provider Name: GAYLE SMITH D.O.

Organization Medicaid or NPI#: 8006849100 Clinic Phone Number: 208-292-0292

Referring Provider's Signature: [Signature]

Referral Start Date 6/24/10 End Date 6/24/10 (not to exceed 365 days) #Visits (if applies) \_\_\_\_\_

Complete only the one referral type indicated above:

1. ☒ To Specific Provider: Provider Name: N.I. PAIN MANAGEMENT

Address: 2003 LINCOLN WAY STE 310 CDA I.D. 83814

Phone Number: 208.765.4807 FX 208.765-2903

2. ☐ Provider Specialty: Indicate Provider Specialty: \_\_\_\_\_

3. ☐ Provider Type: Indicate Provider Type: \_\_\_\_\_

*\*Diagnosis code is optional and may be used with the three referral types noted above. If diagnosis code is included on the referral, exact same diagnosis codes must also be included on claim submitted by "referred to" provider, or claim will deny.*

*Primary Diagnosis	_____	Description	_____
Diagnosis 2	_____	Description	_____
Diagnosis 3	_____	Description	_____

The Diagnosis and Global referral types below are only to be used when the information to complete a referral to a specific provider or for a specific provider type or specialty is not available to the referring provider. This may occur for complex cases or when a member is referred to a large medical facility with multiple billing providers.

4. ☐ Diagnosis only: Indicate diagnosis below and not to exceed 90 days

Primary Diagnosis	_____	Description	_____
Diagnosis 2	_____	Description	_____
Diagnosis 3	_____	Description	_____

5. ☐ Global referral – not to exceed 90 days

Referral Reason – choose one

☐ Diagnose, include testing ☐ Diagnose & Treat ☐ Treat for diagnosed condition ☒ Evaluate, recommend treatment  
☐ Consultation ☐ Follow patient jointly ☐ Assume care ☐ One visit until seen by PCP ☐ DME ☐ Other-describe

NOTES: Additional Referral Details/Limitations TRIGGER POINT INJECTIONS  
OF (2) PERISCAPULAR MUSCLES.

**Delay, Curran, Thompson, Pontarolo & Walker, P.S.**

*Attorneys at Law*

601 West Main, Suite 1212 • Spokane, WA 99201-0684

Phone (509) 455-9500, Toll-Free Number 1-800-572-0933

**Fax (509) 623-1446**

Smith Tower • 506 2nd Ave., 25th Floor • Seattle, WA 98104

Phone (206) 343-8535

**All Correspondence to Spokane Office**

JOSEPH P. DELAY

J. DONALD CURRAN

ROBERT H. THOMPSON

MICHAEL J. PONTAROLO

MICHAEL J. WALKER\*\*

\*CLARENCE A. BOLING (1928-1977)

\*\*Admitted in Washington & Idaho

August 17, 2010

Ben Morris  
1033 N. 22<sup>nd</sup> Street  
Coeur d' Alene, ID 83814

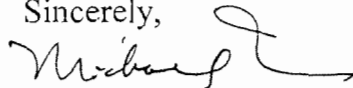
Re: Idaho Workers' Compensation  
Claim No.: WC665-210231

Dear Mr. Morris:

Enclosed please find correspondence from Liberty Northwest dated August 10, 2010. Liberty would like to know whether you are interested in pursuing resolution of the medical side of your workers' compensation claim, based upon an estimation of your future medical by a company they hired to review the Medicare set-aside. If you were to resolve the case on the medical side, you would be expected to put the money in a trust fund and pay only your medical benefits. You would not have access to these funds for your personal use.

When you have had an opportunity to review this documentation, please contact me for further discussion if you wish to proceed with further negotiations on the medical side of the case.

Sincerely,



MICHAEL J. WALKER

MJW:je

Enclosures: As noted above

EX 30

125

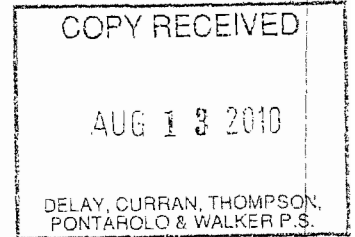


6213 N Cloverdale Rd  
PO Box 7507  
Boise, ID 83707-1507

Tel: 208.322.3339  
www.libertynorthwest.com

August 10, 2010

MR MICHAEL WALKER  
601 W MAIN SUITE 1212  
SPOKANE, WA 99201

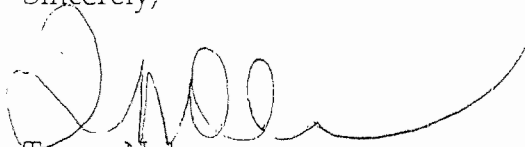


Re: Ben Morris  
Date of Injury: 10-18-06  
Employer: Hap Taylor and Sons  
Claim number: wc665-210231

Dear Mr Walker:

I have enclosed a copy of the most recent Medicare Set Aside obtained for Mr Morris. I have also enclosed an annuity quote for the MSA. Please review and advise me if you client is interested in settling the medical claim. If you have any questions, call me at (208)327-7539.

Sincerely,

  
Teresa Nolen  
Claim Analyst

COPY

ENCLOSURE

Benjamin Morris



400 Riverpark Drive, Suite 400  
 North Reading, MA 01864  
 (866) 630-CPSC Toll-free  
 (978) 774-0540 Facsimile  
 www.CPSCmsa.com

### Medicare Allocation Report

Injured Worker	Benjamin Morris	Insurer	Liberty RAM
Address	971 Starling	Address	6213 N. Cloverdale Road, Suite 150P.O. Box 6358
	Hayden, MD 83835		Boise, ID 83707
Phone Number		Phone Number	800-283-4456 x7562
SSN	[REDACTED]	Insured Contact	Patricia Shosted
DOB	[REDACTED]	Claim Number	WC665-210231
Current Age	33	Date of Injury	10/18/2006
Life Expectancy	-	State of Jurisdiction	ID
Rated Age	42	Pricing Mechanism	ID WC FS & AWP RX
Adjusted LE	38	Employer	Hap Taylor
		Address	6001 E. Seljice
			Post Falls, ID 83854
Prepared By	Rochelle Mack RN, BSN	Date of Report	4/8/2010

#### Related Diagnoses

#### ICD-9 Codes

Cervicalgia	723.1
Depressive disorder	311.0
Post-traumatic headache	784.0
PTSD	309.8

#### Introduction & Description of Injury:

On 10/18/2006, Benjamin Morris sustained a work related injury while employed with Hap Taylor. He was laying pipe when an approximately 25 pound rock was kicked up by an excavator wheel, hitting him in the back of the head. He noted he was knocked six feet from the place of impact. The rock penetrated his helmet. He was dazed and felt he likely lost consciousness, although the time period is unclear. He described some shaking activity of his extremities; however, he was wide awake while this was ongoing. He noted he had scrapes on his face on the right side. He presented initially to Dr. Matis, a family physician. He was then taken to the Kootenai Medical Center. He could not clinch his teeth together. He underwent a number a diagnostic studies.

#### Interim History

1. 10/18/2006-CT of head revealed soft tissue laceration left posterior occiput.
2. 10/18/2006-CT facial revealed multiple nasal fractures. The orbits are intact.

## Benjamin Morris

3. 10/18/2006—CT of cervical spine revealed no fracture, mild degenerative changes mid cervical spine.
4. 10/20/2006—Orthopantomogram with lateral view of the mandible revealed negative views of the mandible
5. In 2006, Mr. Morris treated with Tom E. Nickol, MD, Emergency Medicine, who recommended medications and off work status.
6. In 2006, Mr. Morris treated with Mark E. Manteuffel, MD, Family Practice, who recommended medications, referral, physical therapy and limited duty.
7. In 2006-2007, Mr. Morris treated with Michael A. Ludwig, MD, Physical Medicine and Rehabilitation, who recommended medication, light duty, diagnostic studies, second opinion of head injury specialist and occupational therapy.
8. In 2006, Mr. Morris treated with N. David Crow, DDS, Orthodontist, who recommended seeing a general dentist.
9. In 2006-2007, Mr. Morris treated with Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation, who recommended physical therapy, blue light therapy, trigger point injections, medication and follow up.
10. 6/4/2007—Electroencephalogram was normal including wake and sleep with no epileptiform discharges.
11. In 2007, Mr. Morris treated with Thomas Beaton, MD, Otolaryngology, who recommended steroid nose sprays and if those did not work then septoplasty and turboplasty.
12. In 2007, Mr. Morris treated with R. Clinton Horan, MD, Neurology.
13. \*\*10/16/2007—MRI of cervical spine revealed the discs are degenerative and/or desiccated from C3-C4 through C6-C7. There is a mild, diffuse, circumferential disc bulge noted at C6-C7. There is straightening of the normal cervical lordosis.
14. \*\*In 2007, Mr. Morris treated with Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation, who recommended medication, diagnostic study, referral and follow up.

### Significant Events

ER Admission—10/18/2006—Discharged—10/20/2006

Hospital Admission—10/1/2007—Discharged—10/5/2007

### Additional Records

Physical Therapy—2006-2009

Psychotherapy—2007-2008

Speech Therapy—2007-2008

### Records Reviewed & Description of Medical Care Summary:

2/12/2008

Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation

Purpose: Follow up

Current Medications/DME: Percocet 5mg up to four per day prn; Buspar 10mg tid; Effexor 75mg qd; Ativan 0.5mg tid; Abilify 15mg qd; Prazosin 2mg qhs; Viagra 10mg prn; Soma 350mg bid.



## Benjamin Morris

Assessment: Mr. Morris was diagnosed with closed head injury; cervical injury-whiplash; cognitive deficits; frequent headaches; muscle spasms; neck pain; hypersensitivity to noise and light; TMJ with jaw pain; post concussive syndrome; Hyposomnia; difficulty breathing; nightmares; anxiety; and depression. Recommendations: 5.5cc of 2% Lidocaine were injected into neck and trunk muscles to decrease pain and tone. Obtain authorization for cranial sacral therapy, referral to Dr. Benton, sleep study and vocational rehab. Follow up in 1 month, sooner if trigger point injections required.

3/28/2008

Daniel S. Hayes, PhD, Psychology

Purpose: Follow up

Assessment: Mr. Morris was diagnosed with Axis I- Cognitive disorder, NOS, Personality change due to head injury, Major depressive disorder, single episode, moderate to severe, Generalized anxiety disorder; Axis II- Deferred to psychological evaluation; Axis III- Head Injury; Axis IV- Legal, Medical, Financial, Relational, Axis V- GAF: 50, 60.

Recommendations: Follow the schedule developed during the session today and will monitor his sleeping and mood. He will continue in other therapies as per Dr. Stanek. Follow up in 1-2 weeks.

4/14/2008 (Incomplete Report)

Unknown Physician

Purpose: Follow up

Current Medications/DME: Abilify 15mg qd; Prazosin 1mg 3 qhs; Viagra 25mg qd; Percocet 10-325mg 1 qid; Amitriptyline 75mg 1-2 tabs qhs; Buspirone 15mg tid.

Assessment: Mr. Morris continued to have episodes of nausea and vomiting 2-3x per week primarily in the morning. He had gained 53 pounds since his injury.

4/21/2008 (Incomplete Report)

Unknown Physician

Purpose: Follow up

Current Medications/DME: Abilify 15mg qd; Prazosin 1mg 3 qhs; Viagra 25mg qd; Glyburide 5mg qd; Percocet 10-325mg 1 qid; Amitriptyline 75mg 1-2 tabs qhs; Buspirone 15mg tid; Prevacid 30mg qd.

Assessment: Mr. Morris' blood sugar was found to be 449. He had discontinued Ativan, Soma and Remeron as recommended.

Recommendations: Would like him to stop Abilify, will see how he does before replacing it with another medication for agitation. Discussed his nicotine addiction. Strongly encouraged to stop smoking, chewing and using snuff. He was reminded of the dangers of developing cancer of the mouth, throat or esophagus.

5/14/2008-5/15/2008

Craig W. Beaver, PhD, Neuropsychology

Purpose: Examination

Current Medications/DME: Oxycodone; Risperone 50mg tid; Prazosin.

Assessment: Mr. Morris was diagnosed with Axis I- Cognitive dysfunction, NOS (Postconcussive syndrome, largely resolved). Pain disorder with psychological factors and medical condition. Probable posttraumatic stress disorder, Adjustment disorder with mixed anxiety and depressed mood; Axis II- Hypochondriacal traits; Axis III- S/P mild traumatic brain injury on 10/18/2006, possible sleep apnea, probable cervical strain; Axis IV- Moderately severe psychosocial stressors including financial, social, and legal related to his work comp status; Axis V- GAF: 60.

Recommendations: Consideration of a 2 week intensive treatment in an inpatient/outpatient brain injury treatment program. He may require additional care and treatment after the conclusion of 2 week program, though it is certainly hoped this would be limited, if further care and treatment was needed. If Dr. Lyon feels craniosacral therapy and referral to an otolaryngologist would be of benefit to the patient, they could be accomplished during the 2 week stay in an intensive program. He is not at MMI.

5/30/2008 (Incomplete Report)

Unknown Physician

Benjamin Morris

Purpose: Follow up

Current Medications/DME: Prazosin 1mg 3 qhs; Viagra 25mg qd; Glyburide 5mg bid; Amitriptyline 75mg 1-2 tabs qhs; Buspirone 15mg tid; Prevacid 30mg qd.

Assessment: Mr. Morris was diagnosed with closed head injury; cervical whiplash injury; cognitive deficits; chronic headaches; muscle spasms; Myalgia; Hypersensitivity to light and noise; TMJ with jaw pain; post concussive syndrome; acid reflux disease; and hypertension.

Recommendations: Start daily exercise program. Start vestibular home program. Work on diet and weight loss. Use wet/dry heat on neck along with Skelaxin to decrease tone within neck. Continue blood sugar testing 3 times per day. Follow up in 2 months.

6/14/2008 (IME)

George R. Lyons, MD, Neurology

Purpose: IME

Current Medications/DME: BuSpar 50mg a day; Amitriptyline 75mg a day; Prazosin; Percocet; Glyburide.

Assessment: Mr. Morris was diagnosed with jaw pain; tension type headaches; cervical strain which is related to the work injury; probable obstructive sleep apnea; symptoms of left ulnar neuropathy. There was no evidence of epilepsy.

Recommendations: He should undergo a sleep study to rule out obstructive sleep apnea. Do not believe craniosacral therapy is indicated. An independent TMJ evaluation is recommended. He had reached MMI for his cervical strain.

9/15/2008

Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation

Purpose: Follow up

Current Medications/DME: Prazosin 1mg 4 qhs; Viagra 25mg qd; Glyburide 5mg bid; Amitriptyline 75mg 2 tabs qhs; Buspirone 15mg tid; Prevacid 30mg qd; Percocet 10-325mg qid.

Assessment: Mr. Morris was diagnosed with closed head injury; cervical whiplash injury; cognitive deficits; chronic headaches; muscle spasms; Myalgia; Hypersensitivity to light and noise; TMJ with jaw pain; post concussive syndrome; acid reflux disease; hypertension; anxiety; depression; and diabetes.

Recommendations: He should move forward with vocational rehabilitation therapy. Will have him stop the Skelaxin and have him trial Baclofen at night to manage his spasms and facilitate sleep. His Prevacid will also be renewed today. Check blood sugar four times daily for better monitoring and management.

10/13/2008

Stephanie Miller, RN

Purpose: Pre-Admission Screening

Current Medications/DME: Buspar 15mg po id; Amitriptyline 150mg po qhs; Prazosin 4mg po qhs; Baclofen 10mg po qhs; Prevacid 30mg po qd; Glyburide 5mg po bid; Oxycodone 10mg po qid prn.

Recommendations: It is felt that Rehab Without Walls comprehensive home and community based neurorehabilitation program would not be the best fit for him. He had been receiving ongoing therapy services in the outpatient setting and seemed to be showing progress with his cognitive functioning as a result of that treat. He is independent with his mobility, ADLs and IADL's and therefore would not be an appropriate candidate for the Rehab Without Walls model of rehabilitation. He may benefit from continued services on an outpatient basis.

11/13/2008

Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation

Purpose: Follow up

Current Medications/DME: Prazosin 1mg 4 qhs; Viagra 25mg qd; Glyburide 5mg bid; Amitriptyline 75mg 2 tabs qhs; Buspirone 15mg tid; Prevacid 30mg qd; Percocet 10-325mg qid; Baclofen 10mg 1 po qhs.

## Benjamin Morris

Assessment: Mr. Morris was diagnosed with closed head injury; cervical whiplash injury; cognitive deficits; chronic headaches; muscle spasms; Myalgia; Hypersensitivity to light and noise; TMJ with jaw pain; post concussive syndrome; acid reflux disease; hypertension; anxiety; depression; and diabetes.

Recommendations: Pain clinic in Boise. Decrease Buspar to 10mg tid versus 4 to reduce oral tingling. Trial of Lexapro to address depression. Samples provided of 10mg tablets to be taken one tab per day. Follow up in 3 months.

12/2/2008

Craig W. Beaver, PhD, Neuropsychology

Purpose: Records Review

Recommendations: Would not recommend any further neuro-rehabilitative care, further psychiatric care or treatment. Recommend that he have an IME TMJ evaluation to see what, if any, further care or treatment was indicated with regard to his jaw. He is at MMI, defer with regard to the TMJ issue. 10% WPI. He is capable of returning to employment with permanent restrictions. He is not to work in situations with unprotected heights. Recommend restriction from working road construction with pipe laying, would likely cause difficulties to him secondary to his PTSD issues.

1/5/2009 (IME)

Grant F. Rodkey, DMD, Dentistry

Purpose: IME

Assessment: Mr. Morris was diagnosed with right and left temporomandibular joint normal function and range. No pathologic conditions present; caries (tooth decay), not accident related; attrition and abfractions, not accident-related; and calculus accretions, not accident-related.

Recommendations: He did not sustain a TMJ injury. There is no permanent partial impairment.

1/26/2009

Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation

Purpose: Follow up

Current Medications/DME: Viagra 25mg qd; Prevacid 30mg qd; Amitriptyline 75mg 2 tabs qhs; Prevacid 30mg 1 po qd; Baclofen 10mg 1 po qhs; Glyburide 5mg bid; Buspirone 15mg tid; Prazosin 1mg 4 qhs; Lexapro 10mg qd; Percocet 10-325mg qid; Imitrex 100mg 1 at onset of HA and may repeat times one.

Assessment: Mr. Morris was diagnosed with closed head injury; cervical whiplash injury; cognitive deficits; chronic headaches; muscle spasms; Myalgia; Hypersensitivity to light and noise; TMJ with jaw pain; post concussive syndrome; acid reflux disease; hypertension, stable; hypsomnia; nightmares, improved; anxiety; depression; and diabetes.

Recommendations: Imitrex 100mg for migraine like headaches. Percocet 10/325. MRI of cervical spine. Refer to CranioSacral Therapy in CdA. Trigger point injections today. Follow up in 1 week.

2/2/2009

Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation

Purpose: Follow up

Current Medications/DME: Viagra 25mg qd; Glyburide 5mg bid; Percocet 10-325mg qid; Buspirone 15mg tid; Prazosin 1mg 4 qhs; Lexapro 10mg qd; Prevacid 30mg 1 po qd; Imitrex 100mg 1 at onset of HA and may repeat times one.

Assessment: Mr. Morris was diagnosed with closed head injury; cervical whiplash injury; cognitive deficits; chronic headaches; muscle spasms; Myalgia; Hypersensitivity to light and noise; TMJ with jaw pain; post concussive syndrome; acid reflux disease; hypertension, stable; hypsomnia; nightmares, improved; anxiety; depression; and diabetes.

Recommendations: Rx refill provided for Lexapro and Percocet. Call Durney clinic about getting Ben in for a diabetic consultation. Consider different dentist for TMJ eval. Follow up in 6 weeks.

4/22/2009

Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation

Purpose: Correspondence

**Benjamin Morris**

Recommendations: Admit him to a rehabilitation program that will address all of his issues (frequent headaches, neck pain, TMJ, deconditioning, Diabetic management, nutrition and weight loss, psychological counseling to address depression, anger and coping skills). Anticipate that he should be ready to transition to vocational rehabilitation to assess suitable employment followed by successful transition to the work force.

5/19/2009

Peggy S. Wilson, PT

Purpose: FCE

Recommendations: He is not a candidate for Work-Star Program. He demonstrated the ability to currently function at his pre-injury work level (Very Heavy)

5/19/2009

Robert F. Calhoun, PhD, Psychology

Purpose: Psychological Pain Evaluation

Recommendations: The prognosis is very poor as far as Mr. Morris benefiting from and moving forward functionally in the Work Star Program due to the aforementioned psychological and behavioral factors impacting his pain problem and current state of debilitation. He remains at high risk for showing subjective cognitive and physical symptoms, which are out of proportion of the objective medical findings.

5/19/2009

Kevin R. Kraft, MD, Physical Medicine and Rehabilitation

Purpose: Evaluation

Current Medications/DME: Endocet.

Assessment: Mr. Morris was diagnosed as s/p TBI; complaint of headaches; neck pain; sleep disturbance; symptom magnification; employment instability; deconditioning; and diabetes mellitus.

Recommendations: Quota based work hardening assessment and physical therapy. Neuropsychology assessment and review with his regards to history of TBI and reported PTSD. Consider anti-depressant medications.

5/20/2009

Unknown Physician, Boise Physical Medicine & Rehabilitation Clinic

Purpose: Impairment Rating

Recommendations: MMI with 6% WPI. He should avoid unprotected heights. No further treatment is required.

7/15/2009

Kevin R. Kraft, MD, Physical Medicine and Rehabilitation

Purpose: Correspondence

Recommendations: He is not restricted to 100 pounds lifting.

\*\*11/13/2009

Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation

Purpose: Follow up

Current Medications/DME: Percocet 10-325mg TID per taper instructions; Methocarbamol 750mg bid;

Fioricet-Codeine 30-50-325-40mg q4-6h as needed

Assessment: Mr. Morris was diagnosed with history of mild brain injury; history of whiplash; unresolved TMJ; hypsomnia; post concussive syndrome; depression with anxiety; diabetes; chronic neck pain and spasms; chronic headaches; nightmares; dizziness; and possible acute withdrawal symptoms.

Recommendations: Rx for glucometer, lancets, and test strips. Stay with family and observed over the next three days. Not to drive over next three days. Increase water intake. Rx for 3 Valium 5mg qhs. Call on Monday. Urine sample obtained for toxicology screen. Follow up on 11/17/2009 for repeat Botulinum Toxin A injections if stable.

**Benjamin Morris**

\*11/25/2009

Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation

Purpose: Follow up

Current Medications/DME: Prevacid 30mg 1 po qd; Percocet 10-325mg TID per taper instructions; Methocarbamol 750mg bid; Fioricet-Codeine 30-50-325-40mg q4-6h as needed; Diazepam 5mg -1 tab at qhs pm; Lexapro 10mg qd

Assessment: Mr. Morris was diagnosed with history of mild brain injury; history of whiplash; unresolved TMJ; post concussive syndrome; depression with anxiety; diabetes; chronic neck pain and spasms; chronic headaches; nightmares; and dizziness.

Recommendations: Discontinue Percocet, Methocarbamol, Buspar, Prazosin and Fioricet. Continue Lexapro and Prevacid, one tablet each per day. Follow up in 1 month.

\*\*1/15/2010

Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation

Purpose: Follow up

Current Medications/DME: Prevacid 30mg 1 po qd; Lexapro 10mg qd

Assessment: Mr. Morris was diagnosed with history of mild brain injury; history of whiplash; unresolved TMJ; post concussive syndrome; depression with anxiety; diabetes; chronic neck pain and spasms; chronic headaches; nightmares; and dizziness.

RL Refer for SLRI Pain Clinic for comprehensive program to facilitate return to work. Refer to ENT. Increase Lexapro to 20mg qd. Follow up on 2/26/2010.

\*\*2/26/2010

Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation

Purpose: Follow up

Assessment: Mr. Morris was diagnosed with history of mild brain injury; history of whiplash; unresolved TMJ; post concussive syndrome; depression with anxiety; diabetes; chronic neck pain and spasms; chronic headaches; nightmares; and dizziness.

Recommendations: Referral to Dr. Watanabe for cervical steroid epidural injections. Continue with Roxanne at Idaho DVR. Follow up on 4/16/2010.

\*\*3/12/2010

Karen Stanek, MD, PhD, Physical Medicine and Rehabilitation

Purpose: Correspondence

Recommendations: Referral to Dr. Watanabe for epidural steroid injections into the neck.

**Pre-Existing & Unrelated Conditions:**

Allergic/Intolerant to Trazodone, Seroquel, Codeine, Hydrocodone, questionable antibiotic and Ambien (12/5/2007)

Hypertension (5/30/2008)

Diabetes (9/15/2008)

Smokes 20 cigarettes per day (5/19/2009)

Acid reflux disease

Asthma

Possible bipolar disorder

**Current Functional Status:**

As of 5/19/2009, per Ms. Wilson, Benjamin Morris has the ability to function at his pre-injury work level, very heavy.

As of 5/20/2009, Benjamin Morris was judged to be at MMI with a 6% WPI.

**Benjamin Morris****Summary of Future Treatment Plan:**

Per the treatment records provided, Mr. Morris sustained a closed head injury and treated conservatively for chronic headache, neck pain and depression. On 12/2/08 per neuropsychology, Mr. Morris was MMI in regard to his orthopedic injuries and neurocognitive complaints as well as psychiatric complaints. Per Physical Medicine, Mr. Morris was judged MMI on 5/20/09 with no further treatment recommended. While records reflect additional complaints that included hypertension, diabetes and acid reflux the carrier has indicated that only the head, neck and depression were compensable. Per last treatment note on 11/25/09, Mr. Morris continued in follow-up with psychiatry. Medications were adjusted to include Lexapro and Prevacid, only. Subsequent records through 3/12/2010 indicate medication adjustments and referral for cervical epidural steroid injections.

In order to protect Medicare's interests, physician visits, psychotherapy/medication management, physical therapy, lab work, diagnostic studies, trigger point injections, epidural steroid injections and medications will be projected. Per 1/15/2010 treatment note allocation was made for Lexapro 20mg qd. AWP pricing. Prevacid is a non-covered OTC medication. Should there be a change in treatment plan or additional records become available prior to CMS submission the projection can be updated.

Lifetime Services/Items Costs:	\$49,264.67
Lifetime Prescription Medication Costs:	\$46,741.90
Lifetime Total:	\$96,006.57

Respectfully submitted,

Rochelle Mack RN, BSN

Injured Worker: Benjamin Morris  
Date of Birth: 7/24/1976  
Life Expectancy: 38 Years (based on Rated Age)  
Costs Based Upon State WC Fee Schedule  
Date of Report: 4/8/2010

**Cost Analysis  
For Projected Medicare Covered Items/Services**

Providers Service	Frequency	Unit Cost	Annual Cost	Lifetime Cost
Dx: MRI/CT; head/brain	5	\$1,917.56	\$252.31	\$9,587.80
Dx: MRI; cervical	5	\$1,607.91	\$211.57	\$8,039.55
Dx: X-ray; cervical	12	\$128.07	\$40.44	\$1,536.84
Dx: X-ray; head	12	\$97.37	\$30.75	\$1,168.44
Injection: Epidural Steroid; Cervical	3	\$1,200.00	\$94.74	\$3,600.00
Lab work	38	\$51.26	\$51.26	\$1,947.88
Physical therapy	24	\$81.74	\$51.63	\$1,961.76
Physician: Physiatrist/Neurologist visits	152	\$113.82	\$455.28	\$17,300.64
Psychotherapy/Medication Management	24	\$161.74	\$102.15	\$3,881.76
Trigger point injections	3	\$80.00	\$6.32	\$240.00

Annual Cost Total  
\$1,296.44

Lifetime Cost Total  
\$49,264.67

Note: If costs are not incurred yearly; the annualized cost is calculated by dividing the lifetime cost by the anticipated life expectancy.

Note: The Prescription Drug Costs and the Total Recommended Allocation are on the next page.

61004100175

135

Injured Worker: Benjamin Morris  
Date of Birth: 7/24/1976  
Life Expectancy: 38 Years (based on Rated Age)  
Costs Based Upon State WC Fee Schedule  
Date of Report: 4/8/2010

**Cost Analysis  
For Projected Medicare Covered Prescription Drugs**

Prescription	Dosage	Times per Day	Unit Cost	Annual Cost	Lifetime Cost
Lexapro (Yr 1-38)	20mg	1	\$3.37	\$1,230.05	\$46,741.90
Annualized Prescription Cost		Lifetime Prescription Cost			
\$1,230.05		\$46,741.90			

NOTE: Per the CMS Policy ID 3976, certain classification of drugs are not covered under Part D Medicare including, but not limited to, benzodiazepines, barbiturates and over the counter medications. If applicable, these drugs are identified separately and are not included in the allocation.

\* The Total Recommended Allocation (Services/Items and Prescriptions) = \$96,006.57

SH164169175



Injured Worker: Benjamin Morris  
Date of Birth: 7/24/1976  
Life Expectancy: 38 Years (based on Rated Age)  
Costs Based Upon State WC Fee Schedule  
Date of Report: 4/8/2010

**Cost Analysis  
For Projected Non-Medicare Covered Items/Services**

Providers Service	Frequency	Unit Cost	Annual Cost	Lifetime Cost
Prevacid OTC	342	\$26.99	\$242.91	\$9,230.58
		<b>Annual Cost Total</b>	<b>\$242.91</b>	<b>Lifetime Cost Total</b>
				<b>\$9,230.58</b>

Note: If costs are not incurred yearly; the annualized cost is calculated by dividing the lifetime cost by the anticipated life expectancy.

6H104100175

## CROWE PARADIS

SERVICES CORPORATION

400 Riverpark Drive, Suite 400  
 North Reading, MA 01864  
 (866) 630-CPSC Toll-free  
 (978) 774-0540 Facsimile  
 www.CPSCmsa.com

## Identifying Information:

Claimant	Claimant	Benjamin Morris	CMS #	N/A	Region	10
	Address	971 Starling	Counsel	Pro se		
	Address	Hayden, MD 83835	Address			
	DOB	[REDACTED]	DOI	10/18/2006	Address	
	Claim #	WC665-210231	SS #	[REDACTED]	Gender	Male
ER / Carrier	Carrier	Liberty RAM	Counsel	Please advise		
	Address	6213 N. Cloverdale Road, Suite 150 P.O. Box 6358	Address			
	Address	Boise, ID 83707	Address			
	Adjuster	Patricia Shosted	Employer	Hap Taylor		
			Address	6001 E. Seluce		
			Address	Post Falls, ID 83854		

## Summary of Case:

Claim Summary	Description of Incident	On 10/18/2006, Benjamin Morris sustained a work related injury while employed with Hap Taylor. He was laying a pipe when an approximately 25 pound rock was kicked up by an excavator wheel, hitting him in the back of the head. He noted he was knocked six feet from the place of impact. The rock penetrated his helmet. He was dazed and felt he likely lost consciousness, although the time period is unclear.				
	Accepted or Denied?	Per the information provided, claim accepted as to the head, neck and psychological condition.				
	SS Status	Medicare eligibility confirmed via SS/Medicare documentation.				
	Age	33	Rated Age	42	Life Exp	-
	Closing Future Meds?	Yes	Other offset?		Adjusted Life Exp	38
	Offset for SIF/ App?	No	Offset for 3 <sup>rd</sup> Party?			No
	Jurisdiction?	ID	CMS Classification (I, II, or III)			I*

## Summary of MSA:

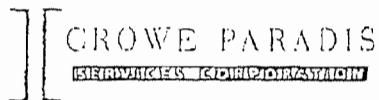
MSA Data	Total MSA	\$96,006.57	Treatment	\$49,264.67	Prescription	\$46,741.90
	Settlement Amount?	Unknown	Settlement Type			Unknown
	CPSC advises Self Administration?					No
	CPSC advises Professional Admin or Self-Admin Support?					Yes
	CPSC advises Structured Settlement?	Yes	Est. Seed Money			\$6,869.61

\* Please see details below outlining our analysis of this issue

C P S C M S P D A S H B O A R D

## Next Steps / Strategy:

Actions Summary	CPSC Next Steps?	<ul style="list-style-type: none"><li>- Provide assistance with settlement documents, if requested</li><li>- Submit to CMS, if requested</li></ul>
	Carrier Next Steps?	<ul style="list-style-type: none"><li>- Please verify all information on the Dashboard</li><li>- Provide settlement amount</li><li>- Advise if you want CPSC to submit to CMS for approval</li><li>- Advise if you want assistance with drafting settlement documents</li><li>- Advise of legal issues or if you want to coordinate with defense counsel</li><li>- Confirm settlement finalized</li><li>- Provide proposed settlement documents</li></ul>



400 Riverpark Drive, Suite 400  
 North Reading, MA 01864  
 (866) 630-CPSC Toll-free  
 (978) 774-0540 Facsimile  
[www.CPSCmsa.com](http://www.CPSCmsa.com)

April 8, 2010

Patricia Shosted  
 Liberty RAM  
 6213 N. Cloverdale Road, Suite 150  
 P.O. Box 6358  
 Boise, ID 83707

RE: Claimant: Benjamin Morris  
 Employer: Hap Taylor  
 DOI: 10/18/2006  
 Claim No.: WC665-210231  
 Jurisdiction: ID

Dear Ms. Shosted,

Crowe Paradis Services Corporation (CPSC) has been retained to ensure compliance with the Medicare Secondary Payer Statute (MSP). As fully detailed below, our blended legal and medical analysis navigates the complexities of MSP compliance as well as assists in the resolution of your claim.<sup>i</sup>

I. Legal Analysis:

A. Background of Medicare Secondary Payer (MSP) Statute

Pursuant to the MSP statute, Medicare payments may not be made for any item or service to the extent that payment has been, or should have been made under a workers' compensation ("WC") law or plan.<sup>ii</sup> As such, it is essential when resolving any claim that you consider Medicare's interests with respect to past and future payments.

B. Past Payments (Conditional Payments)

The Code of Federal Regulations and the MSP are unequivocal that if any payments are made by Medicare prior to settlement they are entitled to reimbursement for those payments.<sup>iii</sup> Consequently, it is critical that this issue is adequately addressed prior to settlement of any claim involving a Medicare recipient. If they are not addressed this can result in significant exposure to all parties associated with the claim in the future.

In order to adequately address the issue of Conditional Payments, we have taken the following steps:

Action Summary	Authorization Requested	Yes
	Authorization Received	Yes
	Reported Claim to Medicare	Yes
	Contacted MSPRC	Yes
	Obtained Conditional Payment Information	Yes

As noted, we are in the process of determining the conditional payment amount. When that information is received, we will notify you of Medicare's asserted lien right. It is important to realize that some providers, suppliers, and physicians still have up to twenty-seven (27) months to submit bills to CMS for payment.<sup>16</sup> It is critical that you adequately address conditional payments in your settlement documents to take into account the possibility of additional payments made by Medicare. If you would like assistance with that aspect, please contact us.

#### C. Future Payments (MSA)

According to current review thresholds, approval from CMS of the MSA amount is recommended when either: (1) the claimant is currently a Medicare beneficiary and the total settlement is \$25,000.00 or more, or when (2) the claimant has a reasonable expectation of Medicare enrollment within thirty (30) months of the date of settlement and the settlement amount is greater than \$250,000.00. However, in July of 2005 CMS also opined that the review thresholds are not "safe harbors" and that "all beneficiaries and claimants must consider and protect Medicare's interest when settling any workers' compensation case."

With this guidance in mind, it appears that the claimant is receiving Social Security Disability Insurance ("SSDI") and is eligible for Medicare as a result. Assuming your claim settles for over \$25,000.00, we recommend submitting this case for CMS review and approval.

#### D. MSA Summary

We recommend that you set aside a total of \$96,006.57<sup>1</sup> to be used solely for future Medicare covered services. This amount is exclusive of any conditional payments already made by Medicare that are related to Mr. Morris' workers' compensation injury. The future medical expenses have been allocated as follows:

- 1) \$46,741.90 will have to be set aside for prescription medications.
- 2) \$49,264.67 will have to be set aside for "traditional" Medicare services.

#### E. Medical Rationale:

##### 1) Prescription Medications

We have determined that \$46,741.90 will have to be set aside for prescription medication. Please see the projected Medicare-covered prescription drugs in the following table:

Projected Medicare Covered Prescription Drugs

Prescription	Dosage	Times per Day	Unit Cost	Annual Cost	Lifetime Cost
Lexapro (Yr 1-38)	20mg	1	\$3.37	\$1,230.05	\$46,741.90

## 2) Medicare Covered Services

Mr. Morris' total MSA allocation will also include other Medicare-covered items and services, included in Medicare Part A and Part B. The total of the services listed below, \$49,264.67, represents the amount to be allocated for "traditional" Medicare services. Please see the projected Medicare-covered items and services in the following table:

### Projected Medicare Covered Items/Services

Providers Service	Frequency	Unit Cost	Annual Cost	Lifetime Cost
Dx: MRI/CT; head/brain	5	\$1,917.56	\$252.31	\$9,587.80
Dx: MRI; cervical	5	\$1,607.91	\$211.57	\$8,039.55
Dx: X-ray; cervical	12	\$128.07	\$40.44	\$1,536.84
Dx: X-ray; head	12	\$97.37	\$30.75	\$1,168.44
Injection: Epidural Steroid; Cervical	3	\$1,200.00	\$94.74	\$3,600.00
Lab work	38	\$51.26	\$51.26	\$1,947.88
Physical therapy	24	\$81.74	\$51.63	\$1,961.76
Physician: Psychiatrist/Neurologist visits	152	\$113.82	\$455.28	\$17,300.64
Psychotherapy/Medication Management	24	\$161.74	\$102.15	\$3,881.76
Trigger point injections	3	\$80.00	\$6.32	\$240.00
		<b>Annual Cost Total</b>	<b>Lifetime Cost Total</b>	
		\$1,296.44	\$49,264.67	

Combined, Mr. Morris' future Medicare-covered prescription drug costs (\$46,741.90) and medical treatment (\$49,264.67) totals \$96,006.57. This is the amount that we recommend that you set aside to cover future Medicare-covered expenses. This amount is based upon a good faith professional judgment derived from the information provided.

The proposed Medicare Set-Aside allocation amount should not be considered final until approved by CMS.

## II. Other cost mitigation issues:

Medicare is only entitled to an amount of money for future care and reimbursement for past payments that would be owed under State law. CPSC believes in advocating for the lowest justifiable allocation possible based upon our combined medical and legal approach. With that in mind, we have also noted the following issues that should be considered:

### Method of Funding

Medicare Set-Aside allocations may be funded with either a lump sum or annuity. In the event that you wish to consider a structured settlement, we preliminarily recommend that you set-aside \$6,869.61 as a seed amount, with annual payments to Mr. Morris of \$2,409.11. This would comply with

Medicare's structured settlement policies, which require that the first procedure, plus two years of annual payments be set aside as seed money. We would be happy to assist your structured settlement broker, or recommend someone with experience in structuring MSA claims.

#### Method of Administration

According to the October 15, 2004 CMS Policy Memorandum an MSA may be either professionally or self-administered. Because we do not have any direct interaction with the claimant, it is impossible for us to recommend a method of administration in this case. The only guidance CMS has provided is that an MSA administrator must be "competent," and that if "a claimant designates a representative payee, appointed guardian/conservator, or has otherwise been declared incompetent by a court: the settling parties must include that information in their Medicare Set-Aside arrangement proposal to CMS."<sup>vi</sup>

In this particular case, given the fact that a portion of the claim is related to a psychological condition, it may be advisable to either have a professional administrator or a self-administration support program in order to ensure proper handling of the funds. In the event that you would like to consider either of these options, we have a partner who would be pleased to work with you.

#### Settlement Language:

Please let us know if you would like assistance in drafting the settlement agreement in this matter. If you elect to utilize standard language or local counsel, please ensure that the following are addressed:

- 1) Conditional Payments
- 2) Future medical payments
- 3) Indemnification / Hold Harmless

#### III. Conclusion

I trust this outlines the essential information with respect to MSP compliance in the above-referenced matter. If you have any questions, please contact me at (866) 630-CPSC.

We thank you for the referral.

Very truly yours,  
CROWE PARADIS SERVICES CORP.

Jonathan Klein, Esq.

enc.

<sup>i</sup> The Company has engaged as counsel a law firm affiliate, which employs the Attorney who executed this letter. The Attorney who executed this letter has provided to the Company the legal analysis set forth below. The Company is providing this analysis to you now. The Attorney who executed this letter does not undertake an attorney-client duty to you, however, as his client is the Company.

<sup>ii</sup> See July 2005 CMS Memorandum: 42 U.S.C. § 1395y(b)(2).

SH104100175

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- iii 42 C.F.R. § 411.20 et seq.
  - iv See April 22, 2004 CMS Memorandum.
  - v This is a good faith estimate by CPSC based upon the information provided. The proposed Medicare Set-Aside allocation should not be considered final until it is approved by Medicare.
  - vi See October 15, 2004 CMS Policy Memoranda.





Cambridge Galaher Settlements

## Mailing Address:

78-670 Highway 111, #214

La Quinta, California 92253

Phone: 800-443-5112

Fax: 440-914-2886

Email: Tracy.Reade@us.xchanging.com

License No.: OC84206

**Settlement Proposal For:****Benjamin Morris**

Date of Birth: [REDACTED]

Quoted with Liberty Life Assurance Company of Boston, rated A (Excellent) by AM Best

Today's Date: 04/09/2010

**MSA Quote**

<b>Benefits</b>	<b>Guaranteed Payout</b>	<b>Expected Payout</b>
<b>Up Front Cash to Seed MSA</b> \$6,869.61 cash at settlement to Benjamin Morris to Seed MSA	\$6,869.61	\$6,869.61
<b>Annual Lifetime MSA Benefit</b> \$2,409.11 annually, payable to Benjamin Morris, for life only, beginning on 05/15/2011	Life Only	\$110,819.06
<b>Plan Total</b>	<b>\$6,869.61</b>	<b>\$117,688.67</b>

*This MSA Plan is based on the MSA allocation report provided by Crowe Paradis dated 04/08/2010. Cambridge Galaher Settlements and Insurance Services, Inc. does not warrant as to the content or accuracy of the allocation report.*

*The benefits and prices above are for illustration purposes only and are not to be construed as a contract or guarantee of benefits or payments of any kind. Additionally, the prices quoted are good for only 7 days from 04/09/2010 or the effective date of a rate change from the life insurance company writing the annuity, whichever is earlier.*

MORRIS, BENJAMIN D

Provider: Gayle Smith, DO

OB: [REDACTED]

MPID#: 15186

Phone: 208-277-5505

Pharmacy: Walgreens Drug Store -CDA

DOS: 10/04/2010

Est Office Visit

Assesment: in addition to the above, we also discussed pt's ability to return to work. Due to his impaired memory, ability to carry out complicated instructions, and dizziness, I would anticipate Ben returning to the work force anytime in the next 12 months, and likely will not be able to work at any point in the future. I recommended he receive a formal neuropsychiatric eval through the department of disability to formally quantify his deficits.

Addendum By: Gayle Smith, DO  
On: 10/05/2010 09:39:31 am

Patient Name: MORRIS, BENJAMIN (07/24/1976)  
Provider: Gayle Smith, DO  
Date of Service: 10/04/10  
Type of Service: Office Visit  
Note Type: Est Office Visit  
History Source: Patient

Type: Established Patient  
Opened: 10/04/2010 13:30  
By: Joanne Johnson  
Close: 10/04/2010 19:08  
By: Gayle Smith, DO

CHIEF COMPLAINT:

Pain management f/u

HISTORY:

1. Neck pain - unfortunately, pt experienced no relief after cervical epidural injection, even temporarily. Pt's wife is present today, and reports that pt's pain is not at all controlled and significantly impacts his function and relationships with the family. Pt reports the pain reminds him of his injury and becomes resentful all over again. Tolerates hydrocodone well except for constipation, usually takes 2-3 per day, although some nights he may take an additional 2 if the pain is unbearable. Headaches less of an issue right now - uncertain if resolved or if just overshadowed by neck pain. No radicular symptoms or weakness.

2. Depressed and confused about whether or not he will work again. Feels that he is only qualified and trained for construction work and really wants to return to work - he has been applying, but no luck. Aware that his poor memory and difficulty completing tasks / following through with directions. Feels that he has been given some indication that he will return to work, but not sure where that came from.

3. Diabetes - checks his blood sugars regularly, but takes glipizide only with high carb meals and if blood sugars running over 100's - usually in 90's. No hypoglycemic episodes.

4. GERD - has been treating with Tums and Zantac for more years - symptoms x 4-5 years. Had been on Prevacid for a time which worked well, but since no longer on workman's comp has been only using otc meds. Symptoms particularly severe at night, occasionally waking him from sleep. Rare dysphagia. Have vomited due to GERD - wife reports occasionally seeing blood with particularly severe episodes. Appetite good, no early satiety.

MEDS/ALLERGIES:

MEDICATIONS:

Norco 325 mg-10 mg tablet 1 tab(s) PO 3 times a day  
GlipizIDE 5 mg tablet 0.5 tab(s) PO 2 times a day  
amitriptyline 100 mg tablet 1 tab(s) PO once a day (at bedtime)  
metoclopramide 10 mg tablet 1 po daily take 10 minutes before dinner

ALLERGIES:

NKA -- No Known Allergies

PROBLEM LIST:

CHRONIC:

Ex 31

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10/04/2010 DIABETES TYPE II  
08/02/2010 Dysthymic Disorder  
07/21/2010 Personal history of traumatic brain injury  
07/21/2010 Chronic post-traumatic headache  
07/21/2010 NECK PAIN  
12/10/2009 TMJ SYNDROME  
10/18/2006 POSTCONCUSSION SYNDROME

VITALS:

10-04-2010 13:34	Weight: 238 lbs	BMI: 35.1	Pulse: 86 BPM	BP: 140 / 92 [arm - sit]
	Temp: 99.1 F° [oral]	Oximetry: 96% [RA]	Height: 69.0 in	

EXAM:

Pleasant male, present with wife, psr worker, and children.  
AAOx3, but appears scattered throughout the exam  
No discrete cervical spasm, poor posture with thoracic kyphosis.

ASSESSMENT:

250.00	DIABETES TYPE II	New Problem
530.81	GERD	Stable
V15.52	Personal history of traumatic brain injury	Stable
723.1	NECK PAIN	Stable

PLAN:

MEDICATION MANAGEMENT:

START: Nexium 40 mg oral [delayed release capsule] 1 cap(s) PO once a day (Disp# 30 cap(s) Refills - 11)

START: Meloxicam 15 mg oral [tablet] 1 tab(s) PO once a day - do not take alone when using this medication (Disp# 30 tab(s) Refills - 3)

REFILL: Norco 325 mg-10 mg 1 tab(s) PO 3 times a day (Disp #: 90 / Refills: 2)

PRINTED

Plan Comments:

Diabetes very well controlled with diet changes and glipizide - no changes to regimen

Trial of meloxicam for neck pain - may require stronger med once GERD better controlled

follow up 2-3 weeks to recheck neck pain

Signed off by: Gayle Smith, DO On: 10/04/10 at 19:08

Author: Gayle Smith, DO

Saved By: Gayle Smith, DO on 10/04/2010 at 07:08:41 PM

## Dictation and Reports [Continued]

Est Office Visit

01/04/2011

Patient Name: MORRIS, BENJAMIN (07/24/1976)	Type: Established Patient
Provider: Gayle Smith, DO	Opened: 01/04/2011 11:26
Date of Service: 01/04/11	By: Joanne Johnson
Type of Service: Office Visit	Close: 01/04/2011 12:08
Note Type: Est Office Visit	By: Gayle Smith, DO
History Source: Patient	

### CHIEF COMPLAINT:

med follow up

### HISTORY:

#1-motor vehicle accident. Patient states that on January 3 he was rear-ended damaging the back end of his car. Since then he has had some flare in his neck pain, but his neck really has been quite painful with any motion or simply aching throughout the day for the last few months. He did have one treatment with craniosacral therapy that was quite relaxing and helped his neck pain and jaw pain significantly. He did not followup with additional treatments due to hunting season, but would like to get back in to craniosacral therapy.

#2 traumatic brain injury-patient was working closely with his PSR worker to help with keeping appointments, however due to the Medicare and Medicaid glitch, he lost this service. He is uncertain what appointments were not kept, but has not yet had his neuropsychiatric evaluation. He reports increased irritability, anxiety, increased tangential thoughts and speech. He reports increased negativity, and feels that this is significantly impacting on his family. He again states that he would like to return to work and be able to "stand on my own two feet." He states his moods are closely tied in with depression of not being able to support his family. He continues to report poor sleep. He stopped the amitriptyline because of weight gain.

### ROS:

As above

### MEDS/ALLERGIES:

#### MEDICATIONS:

Meloxicam 15 mg tablet 1 tab(s) PO once a day - do not take aleve when using this medication

Nexium 40 mg delayed release capsule 1 cap(s) PO once a day

Norco 325 mg-10 mg tablet 1 tab(s) PO 3 times a day

Glipizide 5 mg tablet 0.5 tab(s) PO 2 times a day (On Hold)

metoclopramide 10 mg tablet 1 po daily take 10 minutes before dinner (On Hold)

#### ALLERGIES:

amitriptyline -- weight gain

NKA -- No Known Allergies

&nbsp;

### PROBLEM LIST:

#### CHRONIC:

10/04/2010 DIABETES TYPE II

10/04/2010 GERD

08/02/2010 Dysthymic Disorder

07/21/2010 Personal history of traumatic brain injury

07/21/2010 Chronic post-traumatic headache

07/21/2010 NECK PAIN

12/10/2009 TMJ SYNDROME

10/18/2006 POSTCONCUSSION SYNDROME

### VITALS:

EX 32

[This report is continued on the following page]

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## Dictation and Reports [Continued]

Est Office Visit [Continued]

01/04/2011

01-04-2011 11:34 Weight: 234 lbs BMI: 34.5 Pulse: 89 BPM BP: 130 / 100 [arm - sit] Temp: 98.4 F° [oral] Resp: 16 / min Oximetry: 95% [RA] Height: 69.0 in

### EXAM:

pleasant, appropriately groomed, cooperative gentleman in no acute distress  
Patient slightly tangential, but conversation is more unfocused, jumping to different ideas without appropriate links.  
3 cm area of induration and swelling over the left forehead, with central comedone  
Positive cervical spasm and diffuse, superior trapezius spasm

### LAB COMMENTS:

Hgb A1C 6.2 (off meds)

### ASSESSMENT:

310.2	POSTCONCUSSION SYNDROME	Stable
V15.52	Personal history of traumatic brain injury	Stable
723.1	NECK PAIN	Stable
250.00	DIABETES TYPE II	Stable

### PLAN:

#### LAB ORDERS:

Comprehensive Metabolic Panel routinely on 01/04/2011 from In House/Other Facility  
Hemoglobin A1C (Glycohemoglobin) routinely on 01/04/2011 from In House/Other Facility  
Microalbumin: Random Urine routinely on 01/04/2011 from In House/Other Facility

#### MEDICATION MANAGEMENT:

START: nortriptyline 75 mg oral [capsule] 1 cap(s) PO once a day (at bedtime) (Disp# 30 cap(s) Refills - 11)  
START: cephalexin 500 mg oral [tablet] 1 tab(s) PO IID for skin infection (Disp# 21 tab(s) Refills - 0)  
REFILL: Meloxicam 15 mg 1 tab(s) PO once a day - do not take aleve when using this medication (Disp #: 30 / Refills: 11) FAXED TO: Walgreens Drug Store -CDA APPLEWAY

#### Plan Comments:

I recommended again for the patient to have a neuropsychiatric evaluation. This will help our assessment as to whether or not Benjamin can work and return to full-time employment. My concern is that Benjamin is not able to work independently, and I am uncertain that he will be able to return to work independently, however he may be able to participate in employment through some type of assisted service, such as TESH. Patient and his family can inquire about an independent neuropsychiatric evaluation through the office of Social Security. In the meantime, I have changed his amitriptyline to nortriptyline 75 mg nightly, as this is associated with less weight gain. I would like to see him back in one month to see how he is doing on this medication.

Diabetes under fair control without medication. Ok to stay off glipizide for now.

Signed off by: Gayle Smith, DO On: 01/04/11 at 12:08

Author: Gayle Smith, DO

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**Delay, Curran, Thompson, Pontarolo & Walker, P.S.**

*Attorneys at Law*

601 West Main, Suite 1212 • Spokane, WA 99201-0684

Phone (509) 455-9500, Toll-Free Number 1-800-572-0933

**Fax (509) 623-1446**

Smith Tower • 506 2nd Ave., 25th Floor • Seattle, WA 98104

Phone (206) 343-8535

**All Correspondence to Spokane Office**

JOSEPH P. DELAY

J. DONALD CURRAN

ROBERT H. THOMPSON

MICHAEL J. PONTAROLO

MICHAEL J. WALKER\*\*

•

CLARENCE A. BOLING (1928-1977)

*\*\*Admitted in Washington & Idaho*

October 7, 2009

Ben Morris  
550 Hydra Place, Unit A  
Post Falls, ID 83854

Re: Idaho Industrial Insurance Claim

Dear Mr. Morris:

This letter is in follow up to our telephone conference of October 6, 2009. We have checked into your remaining balance of PPI following your most recent payment received in September 2009, and you have a balance due of approximately \$2,841.00. You can anticipate approximately 2 additional PPI payments before your PPI award has been paid in full. The current outstanding balance due for attorney's fees totals \$2,190.00.

Sincerely,



MICHAEL J. WALKER

MJW:je

Ex 33

150

STARR KELSO  
Attorney at Law #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 208-765-3260  
Fax: 208-6646261

Attorney for Claimant Morris

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BENJAMIN MORRIS,	:	
Claimant,	:	
	:	I.C. NO.: 2006-525142
vs.	:	
	:	AFFIDAVIT OF STARR KELSO
HAP TAYLOR & SONS, INC.	:	
Employer,	:	
and	:	
LIBERTY INSURANCE CORP.,	:	
Surety,	:	
<u>Defendants.</u>	:	

STATE OF IDAHO	)
	ss.
County of Kootenai	)

STARR KELSO, being first duly sworn on hereby state as follows:

1. I am over the age of 21, competent to testify, and make these statements  
upon my personal knowledge to which I will testify if compelled to do so  
by the Industrial Commission.

2. I am the attorney for the Claimant, Benjamin Morris. I commenced representing him in this matter on June 23, 2011.
3. I have reviewed the facts and circumstances leading up to and after the signing of a lump sum settlement agreement in this matter, with the Claimant Benjamin Morris and his father Harold Dean Morris.
4. My understanding of the Claimant's recollection of some of these facts and circumstances is set forth below.
5. I have reviewed a substantial number of the Claimant's medical records and because of the lack of training I, in good faith, have uneasiness about being able to prepare an affidavit for him to sign stating that he is "competent to testify". He very well may be competent to testify, but under the circumstances I feel that determination is properly one for the Industrial Commission to make at a hearing held in this matter regarding the Claimant's motion to review the lump sum settlement agreement to determine if it represents a manifest injustice.
6. It is my understanding of the Claimant's recollection of the facts and circumstances, in part, as follows:
  - a. When Mr. Walker began representing him in this matter, on or about March 13, 2008 which was about 17 months after his accident and injury, he (Mr. Walker) took attorney fees from the



temporary total disability benefits that Claimant was already receiving in the normal course.

- b. The temporary total disability checks were sent to Mr. Walker, after he was retained to represent him, and Mr. Walker took out 25% as attorney fees, and then sent the balance to him.
- c. He argued with Mr. Walker about his taking attorney fees out of the temporary total disability benefits, because he didn't feel that Mr. Walker had done anything to obtain them for him.
- d. That the "lien" of James Hannon was for legal work that he performed on a child support case brought against him by the State of Idaho and not for work that he performed on his worker's compensation claim.
- e. That when Mr. Walker discussed the settlement offer with him, it was over the telephone.
- f. That in discussing the settlement offer with him Mr. Walker advised him that he should accept this "very generous offer."
- g. That Mr. Walker advised him that he wouldn't get any more money from them than the amount of the settlement offer.
- h. That Mr. Walker advised him that there was a good chance that he would end up owing a lot of money to Dr. Stanek and Dan

Brownell if they had to testify, and that would reduce the money that he received.

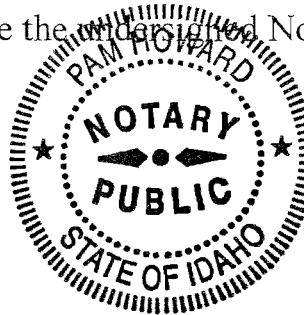
- i. That Mr. Walker informed him that Dan Brownell was putting a report together.
- j. That he was not provided a vocational report by Dan Brownell regarding him by Mr. Walker.

DATED this 6 day of July, 2011.

*Starr Kelso*  
Starr Kelso

SUBSCRIBED AND SWORN to before me the undersigned Notary Public on the 6<sup>th</sup> day of July, 2011.

*Pam Howard*  
NOTARY PUBLIC FOR IDAHO  
Residing at *Pothole*  
My commission expires: *8/6/16*



CERTIFICATE OF SERVICE: I certify that a copy was mailed on the 8<sup>th</sup> day of July, 2011 to the following:

Kent W. Day  
Attorney at Law  
6213 Cloverdale Rd. Ste. 150  
P.O. Box 6358  
Boise, Idaho 83707-6358

Michael J. Walker  
Attorney at Law  
601 West Main, Suite 1212  
Spokane, Washington 99201-0684  
*Starr Kelso*  
Starr Kelso

James Hannon  
Attorney at Law  
P.O. Box 3190  
Coeur d'Alene, Idaho 83816

STARR KELSO  
Attorney at Law #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 208-765-3260  
Fax: 208-6646261

ORIGINAL

Attorney for Claimant Morris

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BENJAMIN MORRIS,  
Claimant,

:

:

I.C. NO.: 2006-525142

vs.

:

AFFIDAVIT OF  
HAROLD DEAN MORRIS

HAP TAYLOR & SONS, INC.  
Employer,

:

and

:

LIBERTY INSURANCE CORP.,  
Surety,  
Defendants.

:

:

STATE OF IDAHO )  
ss.  
)  
COUNTY OF KOOTENAI )

HAROLD DEAN MORRIS being first duly sworn upon oath hereby states as follows:

1. I am over the age of 18, competent to testify, and make these statements based upon my personal knowledge to which I will testify if requested to, or directed to, in this matter.

1 AFFIDAVIT OF HAROLD DEAN MORRIS

Ex 13

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2. That I am the father of the Claimant, Benjamin Morris.
3. That at, and before, the time that my son, Benjamin Morris, signed the lump sum settlement agreement I was his payee for his Social Security Disability Benefits because he was unable to manage his own personal financial affairs.
4. Michael J. Walker began representing Benjamin on or about March 13, 2008. I began meeting with Benjamin and Mr. Walker after that time. Benjamin gave Mr. Walker, Dr. Stanek his treating physician, and Dan Brownell, a vocational rehabilitation specialist, permission to speak to me regarding him because there were times when he was unable to understand what was being communicated to him or to recall what was being communicated to him.
5. I went to most of Benjamin's appointments with Mr. Walker and Dr. Stanek because he was unable to keep track of the appointments and times. I also spoke with Mr. Walker from time to time on the telephone. I also met with Dan Brownell on a number of occasions when he was meeting with Benjamin.
6. Many of the discussions I had with Mr. Walker pertained to my questions regarding why Liberty was doing what it was doing and why it was denying the treatment that Dr. Stanek was prescribing. He advised me

that Liberty could pretty much do what it wanted to do and I told him that I thought that was what he was suppose to do.

7. I spoke with Mr. Walker about obtaining job training assistance for Benjamin. I was advised that if he got enough settlement for Benjamin that he would be able to take the money and retrain himself.
8. When there were discussions about a settlement offer I questioned it because, at a minimum, it didn't appear to me that there would be sufficient money to pay for retraining. I told Mr. Walker that I didn't believe there was sufficient money to provide Benjamin with retraining.
9. I told Mr. Walker that I was Benjamin's payee and that with regard to financial matters he needed to speak to me about them. He advised me that the state didn't recognize what Social Security did and that he was Benjamin's attorney and not mine. This was the last time that I able to speak with Mr. Walker. One time after this I called to speak with him, he was not available, and thus I was not able to speak with him. In the past he had returned my calls but he did not return this call.
10. I attempted to speak with Dan Brownell about whether there was sufficient money for retraining but I was unable to speak to him about it.

11. That based upon my observations of my son I do not believe that he understood the ramifications, and long term effects, of his actions in signing the lump sum settlement agreement.

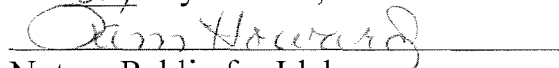
12. I was very concerned that if Benjamin received a lump sum of money, in any amount, it would be gone within a month or so because of his inability to manage his finances.

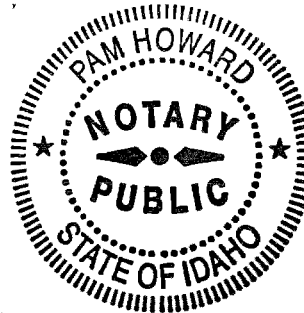
13. Benjamin had his benefits cut off by Liberty since about December 2008 and he was in serious financial straits and under enormous stress.

DATED this 27 day of June, 2011.

  
HAROLD DEAN MORRIS

SUBSCRIBED AND SWORN TO before me the undersigned Notary Public on the 27 day of June, 2011.

  
Notary Public for Idaho  
Residing at Boothrum  
My Commission expires: 8/6/16



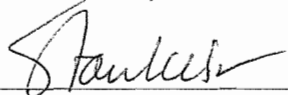
CERTIFICATE OF SERVICE: I certify that a copy was mailed on the 8<sup>th</sup> day of June, 2011 to:

Kent W. Day  
Attorney at Law  
6213 Cloverdale Rd. Ste. 150

P.O. Box 6358  
Boise, Idaho 83707-6358

Michael J. Walker  
Attorney at Law  
601 West Main, Suite 1212  
Spokane, Washington 99201-0684

James Hannon  
Attorney at Law  
P.O. Box 3190  
Coeur d'Alene, Idaho 83816

  
\_\_\_\_\_  
Starr Kelso

STARR KELSO  
Attorney at Law #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 208-765-3260  
Fax: 208-6646261

ORIGINAL

Attorney for Claimant Morris

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BENJAMIN MORRIS, :  
Claimant, :  
 : I.C. NO.: 2006-525142  
vs. :  
 : AFFIDAVIT OF STARR KELSO  
HAP TAYLOR & SONS, INC. :  
Employer, :  
and :  
LIBERTY INSURANCE CORP., :  
Surety, :  
Defendants. :

STATE OF IDAHO )  
 ) ss.  
County of Kootenai )

STARR KELSO, being first duly sworn on hereby state as follows:

1. I am over the age of 21, competent to testify, and make these statements  
upon my personal knowledge to which I will testify if compelled to do so  
by the Industrial Commission.



2. I am the attorney for the Claimant, Benjamin Morris. I commenced representing him in this matter on June 23, 2011.
3. I have reviewed the facts and circumstances leading up to and after the signing of a lump sum settlement agreement in this matter, with the Claimant Benjamin Morris and his father Harold Dean Morris.
4. My understanding of the Claimant's recollection of some of these facts and circumstances is set forth below.
5. I have reviewed a substantial number of the Claimant's medical records and because of the lack of training I, in good faith, have uneasiness about being able to prepare an affidavit for him to sign stating that he is "competent to testify". He very well may be competent to testify, but under the circumstances I feel that determination is properly one for the Industrial Commission to make at a hearing held in this matter regarding the Claimant's motion to review the lump sum settlement agreement to determine if it represents a manifest injustice.
6. It is my understanding of the Claimant's recollection of the facts and circumstances, in part, as follows:
  - a. When Mr. Walker began representing him in this matter, on or about March 13, 2008 which was about 17 months after his accident and injury, he (Mr. Walker) took attorney fees from the

temporary total disability benefits that Claimant was already receiving in the normal course.

- b. The temporary total disability checks were sent to Mr. Walker, after he was retained to represent him, and Mr. Walker took out 25% as attorney fees, and then sent the balance to him.
- c. He argued with Mr. Walker about his taking attorney fees out of the temporary total disability benefits, because he didn't feel that Mr. Walker had done anything to obtain them for him.
- d. That the "lien" of James Hannon was for legal work that he performed on a child support case brought against him by the State of Idaho and not for work that he performed on his worker's compensation claim.
- e. That when Mr. Walker discussed the settlement offer with him, it was over the telephone.
- f. That in discussing the settlement offer with him Mr. Walker advised him that he should accept this "very generous offer."
- g. That Mr. Walker advised him that he wouldn't get any more money from them than the amount of the settlement offer.
- h. That Mr. Walker advised him that there was a good chance that he would end up owing a lot of money to Dr. Stanek and Dan

Brownell if they had to testify, and that would reduce the money that he received.

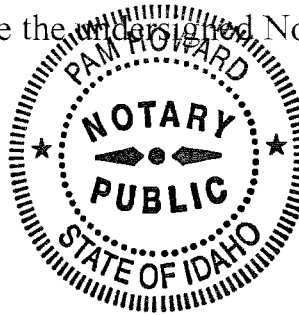
- i. That Mr. Walker informed him that Dan Brownell was putting a report together.
- j. That he was not provided a vocational report by Dan Brownell regarding him by Mr. Walker.

DATED this 6 day of July, 2011.

Starr Kelso  
Starr Kelso

SUBSCRIBED AND SWORN to before me the undersigned Notary Public on the 6<sup>th</sup> day of July, 2011.

Pam Howard  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise, Idaho  
My commission expires: 8/6/11



CERTIFICATE OF SERVICE: I certify that a copy was mailed on the 8<sup>th</sup> day of July, 2011 to the following:

Kent W. Day  
Attorney at Law  
6213 Cloverdale Rd. Ste. 150  
P.O. Box 6358  
Boise, Idaho 83707-6358

Michael J. Walker  
Attorney at Law  
601 West Main, Suite 1212  
Spokane, Washington 99201-0684  
Starr Kelso  
Starr Kelso

James Hannon  
Attorney at Law  
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Coeur d'Alene, Idaho 83816

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Spokane, Washington 99201-0684

James Hannon  
Attorney at Law  
P.O. Box 3190  
Coeur d'Alene, Idaho 83816

---

Starr Kelso

201 JUL 19 AM 10:47

RECEIVED  
INDUSTRIAL COMMISSION

Michael J. Walker  
 Delay, Curran, Thompson,  
 Pontarolo & Walker, P.S.  
 601 W. Main Ave., Suite 1212  
 Spokane, WA 99201  
 (509) 455-9500  
 (509) 623-1446 (fax)

BEFORE THE IDAHO INDUSTRIAL COMMISSION  
 STATE OF IDAHO

Benjamin Morris	)	
	)	IC No.: 06-525142
Claimant,	)	
	)	
vs.	)	AFFIDAVIT OF MICHAEL
	)	J. WALKER IN RESPOSE TO
	)	MOTION TO REVIEW LUMP
Hap Taylor & Sons	)	SUM AGREEMENT
	)	
Employer,	)	
	)	
and	)	
	)	
Liberty Mutual	)	
	)	
Surety,	)	
	)	
Defendants.	)	

State of Washington )  
 ) ss.  
 County of Spokane )

MICHAEL J. WALKER, being first duly sworn on hereby states as follows:

- I am over the age of 21, competent to testify, and make these statements  
 upon my personal knowledge.

AFFIDAVIT OF MICHAEL J. WALKER IN RESPONSE TO  
 MOTION FOR REVIEW OF LUMP SUM AGREEMENT - 1

BEFORE THE IDAHO INDUSTRIAL COMMISSION  
STATE OF IDAHO

AFFIDAVIT OF MICHAEL  
J. WALKER IN RESPOSE TO  
MOTION TO REVIEW LUMP  
SUM AGREEMENT

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2. I am the second of three attorneys Claimant has retained in this matter. I took over this claim after the Claimant terminated the legal services of his first attorney, James P. Hannon. I started to represent the claimant in March of 2008. A Lump Sum Settlement was negotiated, finalized, and approved by the Industrial Commission on January 19, 2010. This issue is arising for the first time 17 months after entry of the approved Lump Sum Settlement Agreement.
3. On July 11, 2011, I received a Notice of Appearance from attorney Starr Kelso, along with a Motion to Review Lump Sum Settlement Agreement. It was my first contact with Mr. Kelso.
4. I was unaware Mr. Kelso was communicating with my Claimant while I still represented him. I have received no written or oral notice from the Claimant that he was terminating my services. The sole contact I have had with Mr. Kelso has been by copy of the pending Motion for Reconsideration. No one has requested that I withdraw as attorney for the Claimant.
5. I am submitting this affidavit to set the record straight.
6. The Affidavit submitted by attorney Kelso is not based upon first-hand knowledge and contains inaccurate factual assertions.
7. Mr. Kelso states that after taking over representation from Claimant's

former legal counsel, "Mr. Walker took attorney fees from the temporary total disability benefits that Claimant was already receiving in the normal course." This statement is false. Mr. Kelso further states, "The temporary total disability checks were sent to Mr. Walker, after he was retained to represent him, and Mr. Walker took out 25% as attorney fees, and then sent the balance to him." This statement is false. Mr. Kelso further states the Claimant "argued with Mr. Walker about his taking attorney fees out of the temporary total disability benefits, because he didn't feel that Mr. Walker had done anything to obtain them for him." This statement is false.

8. When I assumed representation in March of 2008, I forwarded a Notice of Change of Address to the surety, Liberty, who then commenced forwarding temporary total disability (TTD) checks through our office with the first check received on March 25, 2008. TTD benefits continued through December 1, 2008. Upon receipt of each TTD check and at my direction, the entire TTD check was forwarded directly to the Claimant without deduction of any attorney fees. No attorney fees were deducted for these TTD benefits. Claimant and I did not argue over entitlement to attorney fees on TTD benefits as this was never an issue because no fees were deducted from TTD benefits.

9. After taking over representation on the claim, I received copies of attorney



lien documentation from attorney Hannon, which had been filed with the Industrial Commission. I provided Claimant a copy of this paperwork and discussed the same with him. Claimant advised that the lien amount was appropriate and that he did not dispute it. He indicated that he did owe Mr. Hannon for legal services in regard to a child support case. He advised he did not wish to contest Mr. Hannon's fees and directed that I pay the same from any proceeds from this case. We discussed this issue before accepting the surety's final offer in this case and Claimant fully understood the lien would be paid from the settlement proceeds. Claimant directed me to pay Mr. Hannon's fees from the LSS funds, and I did so. These facts are reflected in the LSS documentation, including the IDAPA memo and correspondence.

10. When I took over representation in this case, I immediately started communication with Liberty's legal representatives. I kept Claimant fully advised of all stages of litigation and settlement. At times, Claimant's father was present for discussions about the claim with claimant's permission. At times, Claimant's girlfriend was present with Claimant's permission. At no time did the Claimant advise me that his father possessed decision making authority on Claimant's behalf or that he was incapable of making decisions. At no time did the father or girlfriend ever

state claimant was incapable of making decisions.

11. As part of the litigation/settlement process, I hired vocational consultant Dan Brownell to review the records, meet with the claimant, and provide a vocational opinion. Mr. Brownell's report was provided to the Claimant. The report concluded in part that Claimant had sustained a 50-55% permanent disability, *inclusive of impairment*. As 10% had been paid by the Surety, the range we were working with on settlement/litigation purposes was 40-45% disability, assuming the Industrial Commission agreed with Mr. Brownell's disability. Claimant was earning \$14/hour at the time of injury, so that was the starting point with the disability analysis. Claimant's attending physician had indicated he was capable of working in some capacity. The IC Vocational records reflected an opinion that claimant was able to return to work. These were the facts we were working with as we proceeded to the scheduled litigation and were the major consideration in settlement discussions.
12. During the settlement discussions and the exchange of offers, I communicated with the Claimant and outlined to him his options. The Claimant appeared to understand the process and the settlement discussions. He asked good questions, which I answered. At times, these discussions included his father and former girlfriend, again with

Claimant's permission. At times the discussions were with Claimant only.

At times, these discussions were in person at my office, and others, they were telephonic. In none of these conversations did anyone say the claimant was incapable of making decisions.

13. At no time did I refuse to meet with the Claimant's father.
14. Leading up to hearing the parties exchanged settlement offers. Claimant wanted to deal with the indemnity side separate and leave the claim open for medical. This was relayed to Liberty and settlement discussions undertaken with the purpose of addressing only indemnity. On December 18, 2009, Liberty provided its final offer of settlement of \$54,381 in "gross new money" on the indemnity side. Liberty's offer contained the specific language: "I [Kent Day, Liberty's attorney] have been instructed to proceed with hearing if we can't reach an agreement based on this amount." I relayed this information to the claimant. During our discussion of Liberty's final offer, Claimant was made aware of his options, including taking the settlement or proceeding to litigation.
15. I discussed Liberty's final settlement offer with the Claimant. At no time did he ask that his father or girlfriend be part of the discussion. At no time did he advise me he did not understand the settlement offer or the ramifications of settlement. We discussed the litigation process, the risks

associated with litigation, the length of time for the litigation process, the estimated costs associated with litigation, and the ramifications of taking the settlement. I explained that if we proceeded to hearing, we would need to present medical and vocational evidence by way of post-hearing depositions and that ultimately he would be responsible for these litigation costs. We again discussed the lien filed by Mr. Hannon, his former legal counsel, as well as the unpaid back child support that would be paid from the recovery.

16. I provided the options to the claimant. I did not pressure Claimant to accept the settlement. I did not tell the Claimant that Liberty's offer was "overly generous" as reflected in Mr. Kelso's affidavit. After our discussion, Claimant directed me to accept the offer. He did not want to risk litigation or extend the process further. He wanted to expedite the process and secure the settlement funds. I felt under all the circumstances the offer was reasonable and so advised the Claimant. The Claimant freely accepted my advice without any stress, urgency or pressure from me.
17. LSS documentation was drafted and reviewed. To help protect against social security offset, I asked Liberty to include the language in the agreement regarding averaging Claimant's recovery over his lifespan.
18. The Affidavit of Claimant's father, Harold Dean Morris dated June 27,

2011, contains inaccurate factual statements.

19. The Father, Harold Morris, states that "I told Mr. Walker that I didn't believe there was sufficient money to provide Benjamin with retraining." This is untrue. I did not talk with Harold Morris in regard to the final offer of settlement and its consequences. He did not contact me in regard to the settlement.
20. The Father, Harold Morris, states "I told Mr. Walker that I was Benjamin's payee and that with regard to financial matters he needed to speak to me about them." This is untrue. No such conversation took place. At no time did Claimant or his father advise me that all financial decisions were to be made by the father. Had they done so, I would have required written documentation proving specific legal authority to act on his son's behalf so there would be no misunderstanding. Claimant's father has never told me that he has a power of attorney or other legal right to control the decision-making process of this claim.
21. The Father, Harold Morris, further states that I advised him "that the state didn't recognize what social security did and that he was Benjamin's attorney and not mine." It is likely the Claimant and/or his father asked whether the social security decision controlled the Industrial Commission decision-making process. My response is that it does not, as they are two

separate systems with different burdens of proof. I likely did advise Harold Benjamin that I represented the Claimant and not the father.

22. I did not represent Claimant in his Social Security disability case. I was advised the Claimant had qualified for Social Security disability without having to go through the hearing process. Neither Claimant nor his father provided me a copy of the Social Security decision. I was not provided a copy of the report dated April 22, 2008 by Geraid Gardner, Ph.D., apparently conducted at the request of the social security administrative.
23. At no time when I communicated with the Claimant did I perceive or have the suspicion that he was unable to understand or comprehend our conversations.
24. The Industrial Commission reviewed the Lump Sum Settlement documentation, inclusive of the justification for attorney fees. The Industrial Commission approved my fees. This documentation included my waiver of \$1,391 in fees on PPI that I had been deferring at the Claimant's request because of his financial situation. No fees or interest were charged on the deferred attorney fees. Claimant was extremely appreciative of my deferral of attorney fees, as well as my offer to waive some of the fees to put more money in his pocket at the time of settlement.

Total attorney fees to me were paid pursuant to the approved LSS

documentation.

25. Prior to receipt of the LSS proceeds from Liberty, the Claimant contacted our office and relayed information regarding financial hardship. He asked if our firm could provide an advance on settlement funds for car repairs he had to make. He understood any advance would be deducted from his net settlement proceeds. We provided him two advances, one for \$1,000 and another for \$2,000. These are the advances referenced in Mr. Kelso's motion. Claimant was very appreciative of the advances I provided him on the LSS payments. Upon receipt and disbursement of the LSS proceeds, the \$3,000 in advances was deducted from claimant's net settlement recovery. No interest was charged the Claimant, and no additional fees paid by the Claimant for the advances. Attorney fees were taken by me as approved by the Industrial Commission.
26. At Claimant's direction, I paid the lien of Attorney James Hannon upon receipt of the lump sum settlement funds. This issue was documented in the LSS paperwork and attorney fees memo submitted to the Industrial Commission. At no time during the course of my representation did the Claimant dispute Mr. Hannon's fees as charged in the lien.
27. I am disappointed with the unsubstantiated personal attacks levied by Mr. Kelso on my character and reputation. It is unprofessional. I do not know

attorney Kelso. To my knowledge, I have never met nor spoken with him.

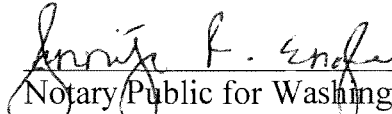
I have never had a case with or against him. He has not contacted me personally in regard to this matter.

Dated this 19<sup>th</sup> day of July, 2011.

  
MICHAEL J. WALKER

SUBSCRIBED AND SWORN TO before me the undersigned Notary Public on the 19<sup>th</sup> day of July, 2011.



  
Notary Public for Washington  
Residing in Spokane  
My Commission Expires: 10/22/2011

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19<sup>th</sup> day of July, 2011, I caused a true copy of the foregoing Declaration of Michael J. Walker in Response to Motion to Review Lump Sum Agreement to be served by the method indicated below, and addressed to the following:

Starr Kelso  
Attorney At Law  
P.O. Box 1312  
Coeur D' Alene, ID 83816

☒ (X) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile



Kent W. Day  
Harmon, Whittier & Day  
P.O. Box 6358  
Boise, ID 83707-6358

(X) U.S. Mail, Postage Prepaid  
( ) Hand Delivered  
( ) Overnight Mail  
(X) Facsimile

James Hannon  
Attorney at Law  
P.O. Box 3190  
Coeur d' Alene, ID 83816

(X) U.S. Mail, Postage Prepaid  
( ) Hand Delivered  
( ) Overnight Mail  
( ) Facsimile



---

MICHAEL J. WALKER

Kent W. Day (ISB 4273)  
 LAW OFFICES OF HARMON & DAY  
 6213 N. Cloverdale Road, Ste. 150  
 P.O. Box 6358  
 Boise, ID 83707-6358  
 Telephone (208) 327-7566  
 Fax (800) 972-3213  
*Employees of the Liberty Mutual Group*  
 Attorneys for Defendant

**BEFORE THE INDUSTRIAL COMMISSION  
 OF THE STATE OF IDAHO**

Benjamin Morris,	)	I.C. No. 2006-525142
	)	
Claimant,	)	
	)	<b>DEFENDANTS OBJECTION TO</b>
vs.	)	<b>MOTION TO REVIEW LUMP SUM</b>
	)	<b>SETTLEMENT AGREEMENT</b>
Hap Taylor & Sons,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
Liberty Insurance Corp.,	)	
	)	
Surety,	)	
	)	
Defendants.	)	

FILED  
 JUL 23 2011  
 INDUSTRIAL COMMISSION

COME NOW the Defendants, Hap Taylor & Sons and Liberty Insurance Corp., by and through their attorney of record Kent W. Day, pursuant to I.C. 72-719 and the Judicial Rules and Practice of Procedure and Object to Claimant's Motion to Review Lump Sum Settlement Agreement.

Defendants object to the Motion to review and set aside the lump sum agreement approved by the Industrial Commission on January 19, 2010, as no manifest injustice has occurred and principles of res judicata bar said agreement from being reopened.

1 – DEFENDANTS' OBJECTION TO MOTION TO REVIEW LUMP SUM SETTLEMENT...

178

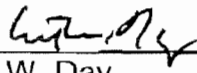
The lump sum agreement is not ambiguous as it clearly states reasonable and necessary medical benefits causally related to the October 18, 2006 injury will continue to be paid as well as reasonable time loss benefits related to the same. The intent of the parties to settle indemnity benefits, including PPI and PPD, when entering into the Lump Sum is clear and is supported by the affidavit of attorney Michael J Walker filed on July 19, 2011.

This Objection is supported by the Memorandum of Law filed herewith.

DATED this 22nd day of July, 2011.

LAW OFFICES OF HARMON & DAY

By: \_\_\_\_\_

  
Kent W. Day  
Attorney for Defendants

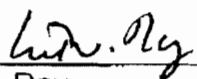
### CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of July, 2011, I caused a copy of the foregoing document to be served by first class mail, postage prepaid, upon the following:

Starr Kelso, Esq.  
Attorney at Law  
P.O. Box 1312  
Coeur d'Alene, ID 83816

James Hannon  
Attorney at Law  
P.O. Box 3190  
Coeur d'Alene, ID 83816

Michael J. Walker  
Attorney at Law  
601 W. Main, Suite 1212  
Spokane, WA 99201

  
Kent W. Day

2 – DEFENDANTS' OBJECTION TO MOTION TO REVIEW LUMP SUM SETTLEMENT...

Kent W. Day (ISB 4273)  
 LAW OFFICES OF HARMON & DAY  
 6213 N. Cloverdale Road, Ste. 150  
 P.O. Box 6358  
 Boise, ID 83707-6358  
 Telephone (208) 327-7566  
 Fax (800) 972-3213  
*Employees of the Liberty Mutual Group*  
 Attorneys for Defendant

**BEFORE THE INDUSTRIAL COMMISSION  
 OF THE STATE OF IDAHO**

Benjamin Morris,	)	I. C. No.: 2006-525142
	)	
Claimant,	)	
	)	<b>MEMORANDUM OF LAW IN SUPPORT</b>
vs.	)	<b>OF DEFENDANT'S OBJECTION TO</b>
	)	<b>MOTION TO SET ASIDE THE LSA</b>
Hap Taylor & Sons,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
Liberty Insurance Corp.,	)	
	)	
Surety,	)	
	)	
Defendants.	)	

INDUSTRIAL COMMISSION

FILED

COMES NOW, Defendants Hap Taylor & Sons and Liberty Insurance Corp., by and through their counsel of record, Kent W. Day, and submit the following Memorandum of Law in Support of Defendants Objection to Motion to Set Aside LSA.

Defendants submit there is no valid reason to set aside the LSA of January 20, 2010, as no manifest injustice has occurred and the LSA itself is not ambiguous. In this case, Claimant cannot plausibly argue that the Lump Sum Settlement Agreement at issue was ambiguous. The Commission, upon reviewing the Agreement to determine if it was in Morris's best interests, entered an order approving the settlement.

1 – MEMORANDUM IN SUPPORT OF OBJECTION TO MOTION TO SET ASIDE LSA

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Many of the assertions by Claimant's current attorney, Starr Kelso, appear to be inaccurate and erroneous as to the facts involved in this matter as they are set forth in the affidavit of Michael J. Walker on file herein.

In *Sines v. Appel*, 103 Idaho 9, 411, 644 P.2d 331 (1982), the Idaho Supreme Court addressed the "manifest injustice" issue and the ensuing obligations of the Industrial Commission when modification of a compensation agreement is sought. The Court ruled that the Commission needs to make specific findings and conclusions regarding Claimants allegations of a "manifest injustice." 103 Idaho at 113.

It is not necessary for the Commission to schedule a hearing to determine whether a manifest injustice occurred when the LSA in this matter was approved. If the proposed agreement had been "obviously unjust, unfair or wrong" (basic definition of manifest injustice as established by the Court in *Sines*) the Commission would not have approved the partial lump sum agreement as submitted by the parties. *Sines* does not suggest or require that the IC hold a hearing to determine whether a final order of the Commission should be set aside. Neither does any other case, statute or rule.

Idaho Code § 72-711 clearly provides, an agreement approved by the Commission "shall for all purposes be an award by the commission." See also *Drake v. State*, 128 Idaho 880, 920 P.3d 397 (1996) (An approved agreement constitutes a final decision of the Commission). Thus, the issue in this case should not be framed as whether Claimant entered into an invalid agreement waiving rights to compensation, but rather whether Claimant may reopen the judgment of the Commission.

When the Commission approved the Lump Sum Settlement Agreement, the Agreement merged into the judgment and the Agreement became the decision of the Commission on the matter. If Claimant had any claim of prejudice or error, his remedy was to timely move to have the Commission reconsider the judgment, i.e., under *Idaho*

2 – MEMORANDUM IN SUPPORT OF OBJECTION TO MOTION TO SET ASIDE LSA

Code § 72-718, and/or the use of applicable appeal procedures. Morris failed to utilize those procedures. Thus, the "decision of the Commission, in the absence of fraud, [was] final and conclusive..." See *Idaho Code § 72-718*; see also *Sadiku v. Aatronics, Inc.*, 128 P.3d 947, 142 Idaho 410 (2006).

The concept of res judicata (claim preclusion) bars Morris from attempting to relitigate the PPD issues in this matter. For claim preclusion to bar a subsequent action there are three requirements: (1) same parties; (2) same claim; and (3) final judgment. *Hindmarsh v. Mock*, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002).

Morris is attempting to once again litigate the *same claim* – his right to worker's compensation indemnity benefits when that claim was fully adjudicated and concluded with a final judgment barring him from asserting any additional PPD or PTD indemnity liability against the defendants. The Commission necessarily decided the issue of Claimant's rights to present and future worker's compensation PPD or PTD indemnity benefits when it approved the Partial Lump Sum Settlement Agreement and dismissed the case. That judgment acts as a bar to Morris's right to pursue the same claim - the right to recover PPD or PTD indemnity benefits worker's compensation benefits from Defendants as a result of an industrial accident - in this proceeding.

The approval of the LSA in this matter is res judicata as to all indemnity issues that were considered and determined by the agreement. *Woodvine v. Triangle Dairy, Inc.* 106 Idaho 716, 682 P.2d 1263 (1984). "*Res judicata*" is comprised of claim preclusion (true *res judicata*) and issue preclusion (collateral estoppel). "Under the principles of claim preclusion, a valid final judgment rendered on the merits by a court of competent jurisdiction is an absolute bar to a subsequent action between the same parties upon the same claim." *Hindmarsh v. Mock*, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002). Claim preclusion bars a subsequent action between the same parties upon the same claim or

3 – MEMORANDUM IN SUPPORT OF OBJECTION TO MOTION TO SET ASIDE LSA

upon claims "relating to the same cause of action ... which might have been made." *Id.* Issue preclusion protects litigants from litigating an identical issue with the same party or its privy. *Rodriguez v. Dep't of Corr.*, 136 Idaho 90, 92, 29 P.3d 401, 403 (2001).

*Res judicata* serves three fundamental purposes: (1) it preserves the acceptability of judicial dispute resolution against the corrosive disrespect that would follow if the same matter were twice litigated to inconsistent results; (2) it serves the public interest in protecting the courts against the burdens of repetitious litigation; and (3) it advances the private interest in repose from the harassment of repetitive claims. *Hindmarsh*, 138 Idaho at 94, 57 P.3d at 805 (quoting *Aldape v. Akins*, 105 Idaho 254, 257, 668 P.2d 130, 133 (Ct. App. 1983)).

The doctrine of *res judicata* is recognized and applied in worker's compensation proceedings. See *Idaho Code* § 72-718; see also *Sund v. Gambrel*, 127 Idaho 3, 896 P.2d 329 (1995) (A compensation agreement approved by the Commission is *res judicata* with respect to matters actually determined by that agreement.). Further, Commission approval of a lump sum agreement constitutes a final judgment on the merits of a claim. *Jackman v. Industrial Special Indemnity Fund*, 129 Idaho 689, 931 P.2d 1207 (1997).

There is no ambiguity in the in the LSA approved by the Commission. It is a regular practice of the Commission to address and approve partial lump sums where medical benefits are left open. Claimant continued to treat for his injuries and thus preferred to keep medicals open, which was agreed upon by Defendants. Consistent with the agreement claimant has sought continued medical treatment from his treating physician post LSA and none of such requests have been denied.

Mike Walkers affidavit and the terms of the Partial LSA make it perfectly clear as to what was being settled by the proposed LSA. Medicals were left open and when related medicals have arisen they have been paid in the 18 months since the LSA was approved.

4 – MEMORANDUM IN SUPPORT OF OBJECTION TO MOTION TO SET ASIDE LSA

No medical information has been submitted to surety post LSA supporting an allegation that Claimant is not medically stable and is back in a period of recovery. Therefore there has been no reason for the parties to deal with an issue of any additional TTD benefits.

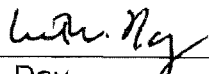
All opinions of vocational evaluators and physicians were taken into account when negotiating the settlement agreement. The indemnity portion of the LSA appropriately included Social Security offset language at Claimants attorneys request. The monthly amount of the Social Security offset proration is completely irrelevant to whether the Partial LSA was "obviously unjust, unfair or wrong".

### Conclusion

The terms of the Partial LSA as negotiated have been approved. These terms were enforced on January 20, 2010, by the signing of the agreement. This agreement clearly states Liberty will continue to pay medicals and any TTD/TPD benefits which are causally related to the industrial accident of October 18, 2006. It was agreed that all other claims were to be forever discharged with the signing of the agreement. Claimants Motions to vacate the LSA should be summarily denied after the Commission makes appropriate Findings of Fact and Conclusions of Law.

Dated this 22nd day of July, 2011.

LAW OFFICES OF HARMON & DAY

  
\_\_\_\_\_  
Kent W. Day  
Attorney for Defendants



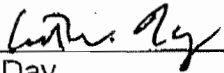
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22nd day of July, 2011, a true and correct copy of the foregoing document was served by facsimile upon the following:

Starr Kelso, Esq.  
Attorney at Law  
P.O. Box 1312  
Coeur d'Alene, ID 83816

James Hannon  
Attorney at Law  
P.O. Box 3190  
Coeur d'Alene, ID 83816

Michael J. Walker  
Attorney at Law  
601 W. Main, Suite 1212  
Spokane, WA 99201

  
\_\_\_\_\_  
Kent W. Day

6 - MEMORANDUM IN SUPPORT OF OBJECTION TO MOTION TO SET ASIDE LSA

STARR KELSO  
Attorney at Law #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 208-765-3260  
Fax: 208-6646261

Attorney for Claimant Morris

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BENJAMIN MORRIS,	:	
Claimant,	:	
	:	I.C. NO.: 2006-525142
vs.	:	
	:	CLAIMANT'S REPLY TO
HAP TAYLOR & SONS, INC.	:	LIBERTY NORTHWEST'S
Employer,	:	OBJECTION TO MOTION
	:	TO REVIEW LUMP SUM
and	:	SETTLEMENT
	:	
LIBERTY INSURANCE CORP.,	:	
Surety,	:	
<u>Defendants.</u>	:	

COMES NOW the Claimant by and through his attorney, Starr Kelso, and hereby replies to Liberty Northwest's Objection to Motion to Review Lump Sum Settlement.

Liberty Northwest's counsel's memorandum is interesting for many reasons:

1. It claims "his (Morris') remedy" was under Idaho Code § 72-718, which pertains to fraud. Claimant's motion is based upon Idaho Code § 72-719,

which pertains to manifest injustice. These are obviously two different statutes utilized in two different situations.

2. It advises the Industrial Commission that “It is not necessary for the Commission to schedule a hearing to determine whether a manifest injustice occurred when the LSA in this matter was approved.” Given the conflict between Mr. Walker on the one side and the Claimant and his father on the other side, it is hard to imagine how the Industrial Commission can enter findings of fact without a hearing.
3. It does not even imply that the Industrial Commission had before it all of the relevant information necessary for it to make an informed decision under Idaho Code § 72-404 as to whether the Lump Sum Settlement Agreement was in the best interest of the Claimant.
4. It’s arguments regarding “res judicata (claim preclusion) and “collateral estoppel (issue preclusion) have literally nothing to do with a “manifest injustice” review by the Industrial Commission.
5. It claims “There is no ambiguity in the in the (sic) LSA approved by the Commission.” It argues that “The Commission necessarily decided the issue of Claimant’s right to present and future worker’s compensation PPD or PTD indemnity benefits when it approved the Partial Lump Sum Settlement Agreement and dismissed the case.” It is entirely unclear how

that can be a remotely a true representation when, as noted in the initial brief, the Lump Sum Settlement Agreement at page 7 thereof specifically states that the claim is discharged,

“...except for reasonable and necessary medical benefits causally related to the October 18, 2006 injury **and time loss benefits associated therewith.**” (emphasis added) The Industrial Commission is well aware that PTD (partial temporary disability) benefits are time loss benefits. Additionally, it is noteworthy that Liberty Northwest specifically does not allege that the Lump Sum Settlement Agreement discharges Claimant’s rights to receive TTD (temporary to disability) time loss benefits. Thus, as a result, because Claimant is still undergoing medical care and is not employed, and not capable of being employed, he should be receiving TTD (temporary total disability) benefits at this time and retroactive to the time this benefit was terminated on December 1, 2008.

6. It asserts that “when related medicals have arisen they have been paid in the 18 months since the LSA was approved.” Perhaps Liberty Northwest would submit to the Industrial Commission a copy of the billings and payments of the medicals they claim “have been paid” on behalf of the

Claimant. Additionally, Claimant has just received a Progressive Medical, Inc. “prescription card” that was forwarded to him after Michael J. Walker received it on July 20, 2011. A copy is attached hereto as Exhibit A. The mailing to Mr. Walker, and Claimant’s receipt of the “prescription card” occurred 18 months after the Lump Sum Settlement Agreement, and also after the pending motion was filed and sent to Liberty Northwest and Mr. Walker.

7. It asserts that “No medical information has been submitted to surety post LSA supporting an allegation that Claimant is not medically stable and is back in a period of recovery.” This statement is a misrepresentation of facts to the Industrial Commission by Liberty Northwest. On August 10, 2010, Liberty Northwest sent Michael J. Walker “a copy of the most recent Medicare Set Aside”, on August 10, 2010. Exhibit 30 to the Claimant’s memorandum in support of the pending motion. This report from Crowe Paradis documents medical information received by Liberty Northwest after the LSA. This medical information confirms that Claimant is not medically stable and is still in the period of recovery. Exhibit 30, beginning at page 7 of the report, documents:

- a. 2/26/2010 Karen Stanek, M.D. Ph.D. “Referral to Dr. Watanabe for cervical steroid epidural injections.”

b. 3/12/2010 Karen Stanek, M.D. Ph.D. "Referral to Dr. Watanabe for epidural steroid injections into the neck."

c. "In order to protect Medicare's interests, physician visits, psychotherapy/medication management, physical therapy, lab work, diagnostic studies, trigger point injections, epidural steroid injections and medications will be projected..."Lifetime Total: \$96,006.57.

This report was utilized by Liberty Northwest in an effort to completely absolve itself of any liability to Claimant for his ongoing medical treatment, and temporary total disability benefits during his ongoing medical treatment, for the paltry sums of \$6,869.61 in up front cash and \$2,409.11 per year, for his lifetime, beginning 5/15/2011. If the Industrial Commission were to inquire of administrators in charge of the approval of such a proposed medical set-aside proposal it would learn that even if the costs projected by Crowe Paradis were approved (which they haven't been as of this time) for medical set-aside purposes the Claimant would, once the money in the medical account has been exhausted, be required to pay out of his pocket the applicable Medicare deductible for each respective treatment and medication. It is also submitted that the medical care that Claimant should have already been

receiving, and will be necessary in the future, far exceed the “up front cash” and the annual payments that Liberty Northwest attempted to have the Claimant agree to accept.

### CONCLUSION

Claimant has just turned 34 years of age. Based upon the information provided to the Industrial Commission with the pending motion, including the medical reports and the vocational reports, it is submitted that a reasonable person, taking into account the relevant facts and circumstances, would have a serious and substantial question whether the Lump Sum Settlement Agreement constitutes a manifest injustice to the Claimant who entered into it while suffering from serious cognitive deficits, who was in a severe financial crisis because his temporary total disability benefits had been terminated, whose medical care from Dr. Stanek went challenged and became unavailable, and who is unemployed and unemployable. It is submitted that Claimant has established prima facie proof of manifest injustice. Claimant is a 34 year old, who is still undergoing treatment, who is not employable except possibly in a sheltered workshop, who has serious cognitive deficits, who has dependents, and who has a standardized projection of a life expectancy of roughly 43 years, and who received a net settlement sum of \$27,453.53.

A hearing should be ordered, all information pertaining to the receipt and disbursement of funds handled through Michael J. Walker should be ordered

provided to the Industrial Commission and Claimant's counsel for review, all medical records pertaining to Claimant should be obtained regarding Claimant for review by the Industrial Commission, and (at the least) the testimony of Dr. Stanek, Gayle Smith D.O. and other Derne Health Centers Family Practice health care providers treating Claimant, Dan W. Brownell, Claimant, Claimant's father, and Michael J. Walker, and Liberty Northwest should be ordered presented to the Industrial Commission. In the case of Dr. Stanek and Gayle Smith D.O., and other Dirne Health Centers Family Practice health care providers, it is submitted that the person(s) considering this pending motion should be personally present at the when this testimony is taken so that he/she/they can personally make inquiry of them regarding the Claimant. It is further submitted that all documentation presented to the Industrial Commission for review and consideration at the time of its consideration of the Lump Sum Settlement Agreement should be provided to Claimant's counsel so that it can be reviewed.

Finally, it is submitted that the Industrial Commission, given the representations of Liberty Northwest, should order that it provide its internal documentation setting forth its projected exposure analysis and reserve set-aside analysis and actual reserve amounts for Claimant's claim, for the entire time of his claim from the date of the accident and injury through the approval of the Lump Sum Settlement Agreement. This information will provide the Industrial



Commission with clear and relevant information to consider in its determination of whether the Lump Sum Settlement Agreement constitutes a manifest injustice.

DATED this 25 day of July, 2011.

Starr Kelso  
Starr Kelso, Attorney for Benjamin Morris

CERTIFICATE OF SERVICE: I certify that a copy was mailed on the 25 day of July, 2011 to:

Kent W. Day  
Attorney at Law  
6213 Cloverdale Rd. Ste. 150  
P.O. Box 6358  
Boise, Idaho 83707-6358

Michael J. Walker  
Attorney at Law  
601 West Main, Suite 1212  
Spokane, Washington 99201-0684

James Hannon  
Attorney at Law  
P.O. Box 3190  
Coeur d'Alene, Idaho 83816

Starr Kelso  
Starr Kelso



c/o Progressive Medical Inc.  
250 Progressive Way  
Westerville, OH 43082

Benjamin Morris 7 246  
C/O Michael Walker Attorney  
601 West Main Suite 1212  
SPOKANE WA 99201-0635



JUN 14 1991

JUN 14 1991

DELA, CURRIAN, THOMPSON,  
PONTARULO & WALKER, P.S.

Re: Liberty Northwest Pharmacy Program

Liberty Northwest has selected Progressive Medical, Inc. to administer its prescription drug program for your workers' compensation prescription plan. Progressive Medical will provide pharmaceutical services to you including both a retail drug card and a home delivery program.

Enclosed is a card to be presented at your local pharmacy to give your pharmacist online access to information regarding your eligibility for workers' compensation coverage. Use of this card will eliminate out-of-pocket expenses for medications when your claim case manager authorizes payment. You have the right to select any pharmacy to fill your workers' compensation prescriptions; however, we have provided a list of pharmacies for your convenience.

Please call Progressive Medical at (866) 764-7987, if you are no longer taking medication(s) for your injury, to assist them in updating your medication history and assist them in maintaining an accurate file.

If you have questions about this card, please call Progressive Medical. If you have questions about your workers' compensation claim in general, please contact your Claim Case Manager.

Sincerely,

Liberty Northwest

For your convenience, we have listed pharmacies in your area below:

HART AND DILATUSH PHARMACY  
601 W Riverside  
Spokane WA 99201

RITE AID PHARMACY # 05302  
112 North Howard Street  
Spokane WA 99201

COMMUNITY HEALTH ASSOC OF  
SPOKANE  
W 1001 2nd Ave  
Spokane WA 99201

NORTHWEST HEALTH SYSTEMS INC  
107 S Division  
Spokane WA 99202

DEACONESS OUTPATIENT  
PHARMACY  
800 W 5th Ave  
Spokane WA 99204

1ST AVE PHARMACY  
6 E 1st Ave  
Spokane WA 99202

Exhibit A

194

For your convenience, we have listed pharmacies in your area below:

HART AND DILATUSH PHARMACY  
601 W Riverside  
Spokane WA 99201

RITE AID PHARMACY # 05302  
112 North Howard Street  
Spokane WA 99201

COMMUNITY HEALTH ASSOC OF  
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107 S Division  
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DEACONESS OUTPATIENT  
PHARMACY  
800 W 5th Ave  
Spokane WA 99204

1ST AVE PHARMACY  
6 E 1st Ave  
Spokane WA 99202

### Workers' Compensation Prescription Drug Card

RXBIN: 600471 RESTAT  
RXGROUP: LMNORWES  
ID #: 1692801946  
Person Code: 000  
Injured Worker: Benjamin Morris  
Claim #: WC665-210231  
Date of Injury: 10/18/2006

 **PROGRESSIVE**  
Medical, Inc.

### Workers' Compensation Prescription Drug Card

RXBIN: 600471 RESTAT  
RXGROUP: LMNORWES  
ID #: 1692801946  
Person Code: 000  
Injured Worker: Benjamin Morris  
Claim #: WC665-210231  
Date of Injury: 10/18/2006

 **PROGRESSIVE**  
Medical, Inc.

---

For additional pharmacies in your area, please visit our website at [www.progressive-medical.com](http://www.progressive-medical.com), click on Workers' Compensation, then Tools and Resources, and then Pharmacy Look-up. Enter your City, State, or Zip and click Submit. You will see a listing of all participating pharmacies within your specified area.



1.866.764.7980

To the Injured Party: If you experience any problems, please call  
1.866.764.7980.

To the Pharmacist: You may contact Progressive Medical, Inc. for issues  
with the card, prior authorization or claim rejections,  
by calling 1.866.764.7980.

Submit Claims to: Progressive Medical, Inc.  
Pharmacy Claims Dept.  
250 Progressive Way  
Westerville, OH 43082



1.866.764.7980

To the Injured Party: If you experience any problems, please call  
1.866.764.7980.

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Pharmacy Claims Dept.  
250 Progressive Way  
Westerville, OH 43082

STARR KELSO  
Attorney at Law #2445  
P.O. Box 1312  
Coeur d'Alene, Idaho 83816  
Tel: 208-765-3260  
Fax: 208-6646261

Attorney for Claimant Morris

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BENJAMIN MORRIS,	:	
Claimant,	:	
	:	I.C. NO.: 2006-525142
vs.	:	SECOND
	:	AFFIDAVIT OF
HAP TAYLOR & SONS, INC.	:	HAROLD DEAN MORRIS
Employer,	:	
	:	
and	:	
	:	
LIBERTY INSURANCE CORP.,	:	
Surety,	:	
<u>Defendants.</u>	:	

STATE OF IDAHO            )  
                                  ss.  
                                  )  
COUNTY OF KOOTENAI )

HAROLD DEAN MORRIS being first duly sworn upon oath hereby states as follows:

1. I am over the age of 18, competent to testify, and make these statements based upon my personal knowledge to which I will testify if requested to, or directed to, in this matter.

2. That I am the father of the Claimant, Benjamin Morris.
3. I submit these statements in response to the affidavit of Michael J. Walker.
4. I was aware of Mr. Walker taking fees from Ben's time loss on a number of occasions. Whether the fees were classified by Mr. Walker as "fees" or "costs" I don't know.
5. At a meeting just prior to Ben changing attorneys from Mr. Hannon to Mr. Walker I was present when Mr. Hannon was asked how much Ben owed him as I was prepared to write him a check on that day. Hannon indicated that "Ben owed him nothing." I replied, "Are you sure?" and again he indicated that Ben owed him nothing. Mr. Walker was told this when he advised Ben and I that Mr. Hannon had filed a claim. It was my understanding that the fees Mr. Hannon was seeking were regarding child support matters and had nothing to do with the Industrial Commission.
6. I am not certain of the appointment date that I spoke with Mr. Walker regarding Ben's incapacities but he should have had the report from Daniel Hayes when he agreed to handle Ben's claim. I indicated to Mr. Walker that Ben needed to have someone else present at all appointments as Ben could not remember what was discussed. On occasion when Ben did go to an appointment alone, I asked Ben what was discussed—he did

not remember and sometimes did not remember being present for the appointment.

7. I am not aware of Mr. Walker specifically refusing to meet with me but when I called I was never passed on to Mr. Walker, nor did he return my phone calls as I asked.
8. Mr. Walker indicated to Ben that if the claim went to trial he could walk away with nothing or end up owing money to witnesses.
9. During one meeting between Ben and Mr. Walker, at which I was present, a settlement was being discussed. I asked about Ben being retrained. Mr. Walker indicated that there would be enough there for Ben to retrain himself.
10. I believe that Ben's not asking that I be with him for certain discussion is part of Ben's lack of good judgment regarding handling financial affairs. I believe he did not want anything to delay or stand in the way of obtaining money because he had been existing for quite some time on only about \$500 per month. He needed money to pay bills and the cost for his future in obtaining that money did not come into play in Ben's thought process.
11. Ben did tell me that Mr. Walker indicated the offer from Liberty was "overly generous".

12. I believe that Mr. Walker's statement that "The Claimant freely accepted my advice without stress, urgency or pressure from me." is false.

13. I informed Mr. Walker that I was Ben's Social Security payee. The fact that Social Security felt Ben needed a payee to handle his finances was relayed to Mr. Walker. He indicated that he was not my attorney, hew as Ben's attorney, and that the Social Security laws did not apply to the State of Idaho.

14. I tried to contact Mr. Walker by phone when the final settlement was being negotiated. He would not return my phone call requests that he do so.

DATED this 29<sup>th</sup> day of July, 2011.

Harold Dean Morris  
HAROLD DEAN MORRIS

SUBSCRIBED AND SWORN TO before me the undersigned Notary Public on the 29<sup>th</sup> day of July, 2011.

Pam Howard  
Notary Public for Idaho

Residing at Gatherum

My Commission expires: 8/6/2016





CERTIFICATE OF SERVICE: I certify that a copy was mailed on the 29  
day of July, 2011 to:

Kent W. Day  
Attorney at Law  
6213 Cloverdale Rd. Ste. 150  
P.O. Box 6358  
Boise, Idaho 83707-6358

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Attorney at Law  
601 West Main, Suite 1212  
Spokane, Washington 99201-0684

James Hannon  
Attorney at Law  
P.O. Box 3190  
Coeur d'Alene, Idaho 83816



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Starr Kelso